

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.1589 of 2018
and CMP No.8621 of 2018

P.Desingu

...Petitioner

Vs.

Md.Gulam Moideen

... Respondent

Prayer: The Civil Revision petition filed under Section 227 of the Constitution of India, against the fair and decreetal order in I.A.No.1221 of 2017 in O.S.No.294 of 2009 dated 27.03.2018 on the file of the Additional District Munsif, Villupuram seeking to set aside the same by allowing the Revision.

For Petitioner : Mr.N.Suresh

For Respondent : Mrs.Hema Sampath,
Senior Counsel for
Mrs.R.Meenal

ORDER

The plaintiff in O.S.No.294 of 2009 aggrieved by an order of the learned District Munsif, Villupuram dismissing his application for amendment of the plaint has come up with this Civil Revision petition.

2. The facts leading to the Civil Revision petition are as follows:

The plaintiff filed a suit in O.S.No.294 of 2009 against the defendant who is a 3rd party purchaser of an undivided share in the suit property, seeking a declaration that the Sale Deed is null and void, mandatory injunction directing the defendant to restore the building to its original position, permanent injunction restraining the defendant in any way proceeding with any other construction in the suit property and for costs.

3. Pending the suit, the petitioner, plaintiff filed an application in I.A.No.1735 of 2011, seeking permission to institute a fresh suit seeking certain other reliefs under Order II Rule 2 of Code of Civil Procedure. The reliefs for which permission to sue was sought for are as follows:

- i. to declare that the defendant is not entitled to have possession over the suit property as he is a stranger transferee and third party to the family of the plaintiff and his brothers;
- ii. for a mandatory injunction directing the defendant to be ejected from the suit property as his possession is illegal;
- iii. for permanent injunction restraining the defendant, his men, agents and servants from in any way interfering with the peaceful possession and enjoyment of the suit property by the plaintiff;
- iv. to direct the defendant to deliver possession of the suit property to plaintiff free from obstruction through Court.

4. This I.A.No.1735 of 2011 was dismissed by the trial Court by an order dated 03.01.2012. Aggrieved, the plaintiff, petitioner herein preferred Civil Revision petition in C.R.P PD No.888 of 2012 before this Court. The said Civil Revision petition came to be disposed of by this Court on 29.06.2017 observing as follows:

“8. The learned counsel for the petitioner submitted that the petitioner would be satisfied in case liberty is given to

file an application for amendment. I do see considerable merit in the said contention.

9. The petitioner cannot be non-suited merely on the ground that he has not taken leave originally. Even according to the respondent, the petitioner is having share in respect of the plaint schedule property. Even if the document evidencing sale of property to the respondent is taken note of, still he is only a co-owner. Such being the factual position, I am of the view that the petitioner should be permitted to file application for amendment of the plaint to claim the additional reliefs.

10. The petitioner is given liberty to file a comprehensive application for amendment of the plaint, for claiming additional reliefs. The learned Trial Judge is directed to permit the amendment. The respondent should be given opportunity to file additional written statement taking into account the plaint so amended.”

5. After the Civil Revision petition was disposed of on the above terms on 29.06.2017, the petitioner filed I.A.No1221 of 2017 before the trial Court seeking leave to amend the plaint pursuant to the liberty granted by the Court. In the proposed amendments, the petitioner sought for the following reliefs:

VI. In para VI of the plaint after b) write as follows:

“c) declare that the defendant is not entitled to have possession of the suit property as he is a stranger transferee and third party to the family of the plaintiff and his brothers;

d) issue mandatory injunction directing the defendant to be ejected from the suit property as his continuous possession is illegal;

e) issue permanent injunction restraining the defendant, his men and agents from in any way interfering with the possession and enjoyment of the suit property viz., after reconstruction by the defendant;

f) direct the defendant to deliver possession of the suit property to the plaintiff free of construction”

6. This application was opposed by the respondent on various grounds. The learned trial Judge dismissed the application upon a very curious interpretation of the order of this Court. When this Court considered the revision against the order refusing leave under Order II Rule 2 of C.P.C., this Court has specifically observed that the petitioner cannot be non suited because he did not take the leave of the Court before institution and he could be allowed to amend the plaint to incorporate those reliefs for

which he wanted leave in the present suit itself. It is this portion of the order of this Court that was completely misunderstood by the learned District Munsif when he concluded that this Court had permitted him to ask for additional reliefs and not same reliefs for which leave was sought for by him in I.A.No.1735 of 2011.

7. This interpretation of the learned District Munsif, in my considered opinion is clearly erroneous. Therefore, I have no hesitation in setting aside the order of the learned District Munsif dismissing the application in I.A.No.1221 of 2017. The order of this Court is very clear that an application for amendment filed seeking same reliefs for which leave was sought for in I.A.No.1735 of 2011 shall be allowed and the respondent shall be entitled to file an additional written statement also. No discretion whatsoever was given to the learned District Munsif to reject the application.

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8. The Civil Revision petition is therefore allowed and the order of the District Munsif, Villupuram is set aside. I.A.No.1221 of 2017 will

stand allowed, the plaint will be amended as prayed for in I.A.No.1221 of 2017. It will be open to the defendant, respondent to file an additional written statement and take all defences that are available to him against the reliefs sought for as per the amended plaint. No costs. Consequently, connected miscellaneous petition is closed.

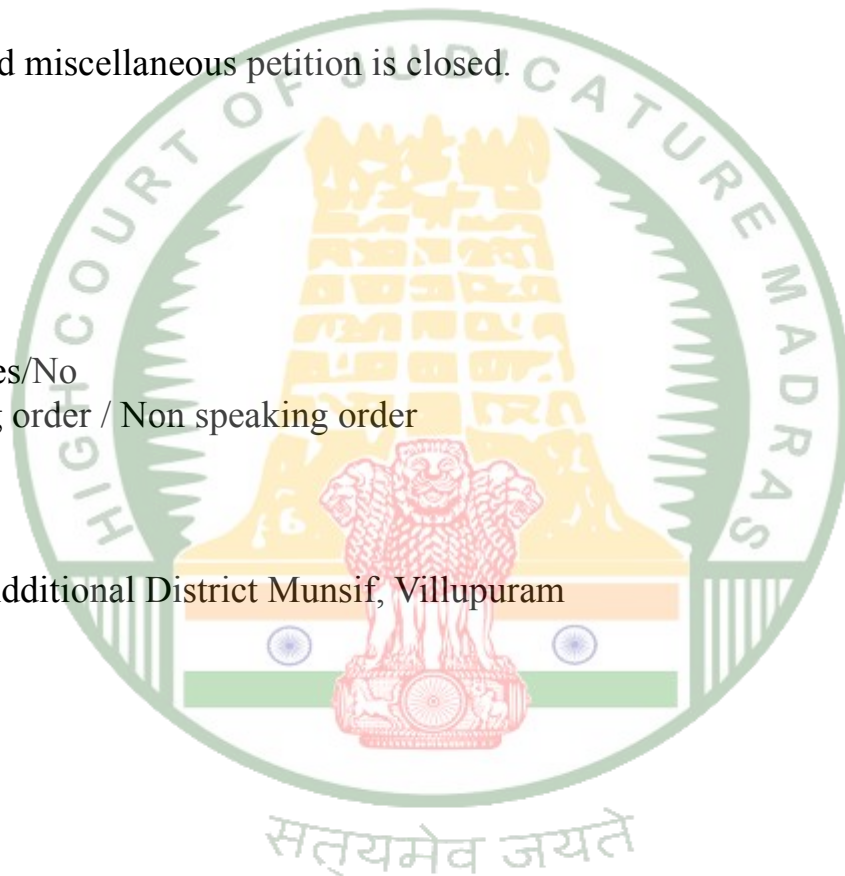
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Index: Yes/No
Speaking order / Non speaking order

To:

1. The Additional District Munsif, Villupuram



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