

CRP (PD) NO.2217 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.2217 OF 2018

AND

CMP NO.13975 OF 2018

Shanmugasundaram

... Petitioner

Vs.

Krishnasamy

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 28.06.2018 made in I.A.No.179 of 2018 in O.S.No.207 of 2014 on the file of the learned First Additional District Munsif Court, Bhavani.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Lakshmanasamy

ORDER

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This Civil Revision Petition has been preferred against the amendment permitted to be made to the plaint after commencement of trial.

2. According to the petitioner, the amendment application filed at the stage of trial when the matter is posted for cross examination of PW1 is belated and opposed to the ingredients of Order 6 Rule 17 of Civil Procedure Code. Further, the incorporation of relief of mandatory injunction is barred by limitation. The suit was filed in the year 2014, but the relief of mandatory injunction sought to be included in 2018 after a period of four years, which is clearly time barred. In the guise of making amendment, plaintiff is attempting to overcome the bar of limitation. Since the petitioner has failed to set out valid reasons and failed to act or show due diligence, he is not entitled to the relief and sought for setting aside the order of the trial Court in permitting the amendment.

3. I have given my curious consideration to the submissions made by the learned counsel for the petitioner.

4. Admittedly, the allegation made against the petitioner/defendant is that during the pendency of the suit, just one month

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before inspection conducted by the Advocate Commissioner, he encroached six cents of land from the suit property. Curiously, appointment of Advocate Commissioner is sought for by none other than the petitioner / defendant himself. The Advocate Commissioner has also filed a report only measuring a portion of land fall within Survey No.77/1, in which, suit schedule property is a part. Since the allegation that the alleged encroachment was made during the pendency of the suit and that the cause of action alleged to have arisen after the filing of the report of the Advocate Commissioner in the year 2015, I do not find any infirmity in the order passed by the Trial Court. If at all, the claim is barred by limitation, it is always open to the petitioner to canvas the same as an issue before the Trial Court. As found by the Trial Court, the suit is at the threshold of trial, amendment will not cause any prejudice to both the parties.

5. Therefore, the order dated 28.06.2018 passed in I.A.No.179 of 2018 in O.S.No.207 of 2014 by the learned First Additional District Munsif Court, Bhavani, stands confirmed.

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6.In fine, the Civil Revision Petition is dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

To

The First Additional District Munsif
Bhavani.

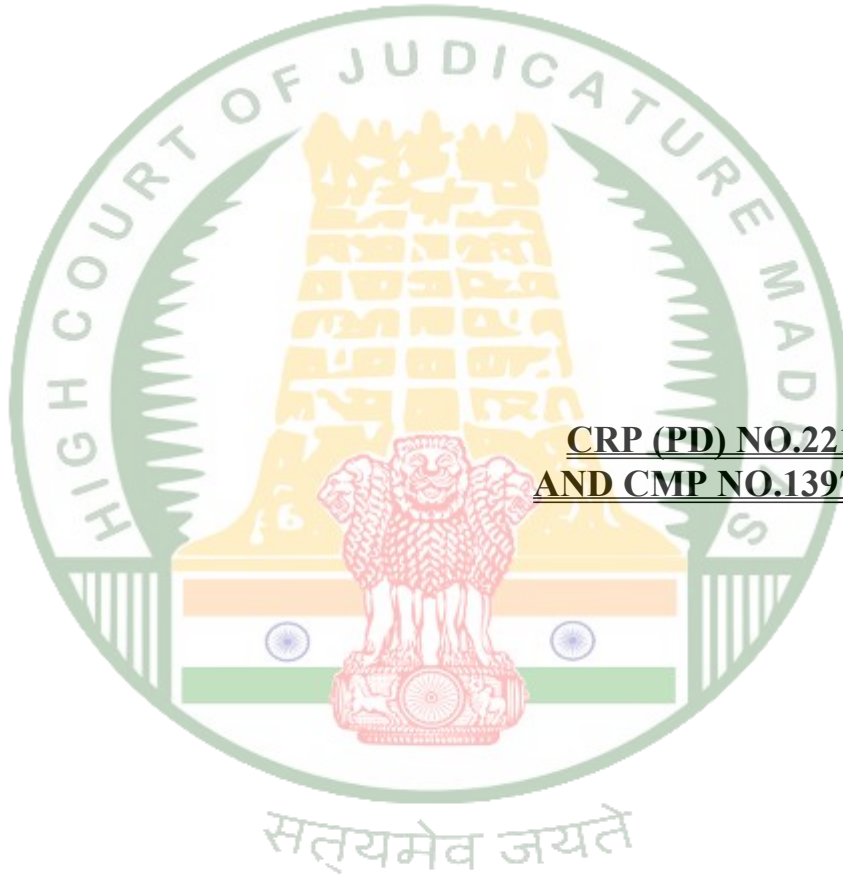


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M.GOVINDARAJ, J.

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