

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.2732 of 2018
& C.M.P.No.16058 of 2018

1. Murugesan

2. Santhi

3. Minor Hariharan

Minor rep. By Next Friend father Murugesan

... Petitioners

Vs.

1. P.Chakravarthi

2. Samikannu

.. Respondents

सत्यमेव जयते

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order of the District Munsif Court at Pappireddipatti, dated 12.06.2018 in I.A.No.493 of 2018 in OS. No.136 of 2014.

For Petitioners : Mr.P.Valliappan

For Respondent : No appearance

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision is by the defendants 2 to 4 in OS No.136 of 2014 challenging an order of the Trial Court allowing an application for amendment of the plaint after commencement of trial.

2. The suit was laid by the plaintiff for specific performance of an agreement dated 06.04.2007. The original suit itself was filed on 28.04.2014. The present application for amendment in IA No.493 of 2018 was filed after the commencement of trial seeking to include a prayer for a declaration of the plaintiff's title to the suit property. The amendment that is sought for is as follows:

“10. தாவா பரிகார பாரா 2(A)-ல்
குறிப்பிட்டு உரிமை டிக்ளேர் செய்தும்.”

Consequential amendments in the valuation of the suit were also sought for.

3. This was resisted by the defendants contending that the prayer for declaration of title cannot be sought for in a suit for specific performance. It was also contended that an earlier application seeking a similar relief in IA No.709 of 2016 was dismissed by the Trial Court on 14.12.2016 and therefore this application is nothing but an abuse of process of Court.

4. The learned Trial Judge on an erroneous appreciation of the law relating to the amendment of pleadings concluded that the falsity or otherwise of the claim made has to be gone into only at the time of trial, after allowing the amendment. On the above conclusion, the learned Trial Judge allowed the application.

5. I have heard Mr.P.Valliappan, learned counsel appearing for the petitioners. The first respondent/plaintiff though served is not appearing either in person or through counsel duly instructed. The second respondent's counsel is absent. The second respondent is the first defendant in the suit, who has no conflicting case with that of the petitioner.

6. The application for amendment itself is wholly misconceived. The prayer sought for in the suit was one for specific performance of the contract. The amendment that is sought now is to include a prayer for declaration of title. These two prayers cannot go together. They cannot be alternative prayers also. From the averments that are sought to be included as paragraph 11(A) of the plaint, it is seen that the plaintiff wants to project that he is entitled to the benefits of Section 53(A) of the Transfer of Property Act. Even if Section 53(A) is to be applied the plaintiff will not get title to the property, he can only protect his possession. Therefore amendment itself is wholly misconceived. Apart from the above, it is seen from the records that the very same prayer was sought for in IA No.709 of 2016 and the same was rejected by the Court by an order dated 14.12.2016. In view of the same the present application itself is barred by principles of *res judicata*.

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7. I am therefore of the considered opinion, the Trial Court was in error in allowing the application for amendment. The Civil Revision

Petition is therefore **allowed**, the order of the Trial Court is set aside, the Application in IA No.493 of 2018 will stand dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

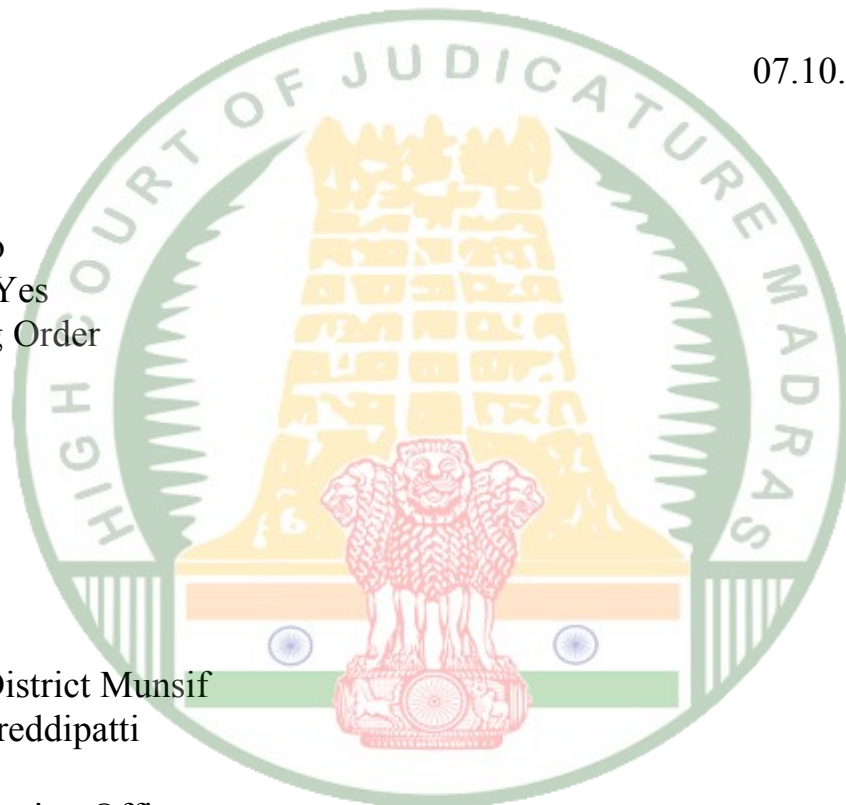
07.10.2020

jv

Index:No
Internet:Yes
Speaking Order

To

1. The District Munsif
Pappireddipatti
2. The Section Officer,
V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

jv



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