

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.122 of 2019

and C.M.P. No.1094 of 2019

Makireddi Ramakrishna

... Petitioner

Vs.

Yalla Sathayabama

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.10.2018 passed in I.A. No.66 of 2018 in O.S. No.31 of 2016 by the Hon'ble Sub Judge at Yanam by allowing the Revision petition.

For Petitioner

: Mr. P.Veeraraghavan

For Respondent

: Mr. A.V.Ramalingam

O R D E R

This petition is filed to set aside the order passed in I.A.No.66 of 2018 in O.S. No.31 of 2016.

2. The respondent as plaintiff filed a suit in O.S. No.31 of 2016 for the relief of declaration of title in respect of the suit property and for grant of permanent injunction. During the pendency of the suit, I.A. No.66 of 2018 was filed by the plaintiff for amending the prayer 'declaration of title and for consequential injunction' to 'declaration of title and for recovery of possession and for consequential injunction'. The reason, according to the respondent plaintiff, is that after filing the suit, the petitioner encroached into her property and falsely claim that he is in possession of the property. The learned trial Judge, after considering the rival submissions, allowed the petition. Against the said order, the petitioner preferred the present Civil Revision Petition.

3. Learned counsel for the petitioner / defendant submitted that this petition is filed belatedly when the case is pending for examination of evidence on the side of the defendant. The petitioner had filed a written statement long back claiming title, in respect of the suit property. After the demise of the father of petitioner / defendant, the defendant and his family members were in possession and enjoyment of the property covered under plot Nos.45 & 46, for decades and enjoyed the same as the absolute owner and their enjoyment is open, hostile, in the eyes of general public and adverse to the rights of owner and therefore, his title is perfected by adverse possession. The specific case of

the petitioner is that he is the owner of the property and there is no specific mention in the affidavit filed in support of the amendment petition about the date of encroachment of the property. Hence the amendment petition ought not to have been allowed. Therefore, he prays for setting aside the order of learned Subordinate Judge, Yanam.

4. Learned counsel for the respondent submitted that though the petitioner claims that the petitioner is in possession and enjoyment of the property, there is no specific details in the written statement as to the nature of the house constructed. The claim that the vendor of the plaintiff promised to provide the house to the father of the defendant is not supported by any material. The respondent filed a suit for declaration of title. Admittedly, now the petitioner is in possession and enjoyment of the property. Without the prayer for recovery of possession, the very filing of suit will be defeated. Therefore, he prays for sustaining the order learned Subordinate Judge, Yanam.

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5. Considered the rival submissions and perused the records. From the narration of facts, it is clear that the petitioner is in possession and enjoyment of the suit property. Of course, there is contrary claim as to the manner in which the petitioner is entitled for the possession and from when he came into

possession of the property. As rightly pointed out by the learned counsel for the respondent, when the property is in possession of the petitioner, without the prayer for recovery of possession, the very filing of the suit will be defeated. Considering the rival claim of title with regard to possession, this Court is of the considered view that only if the proposed amendment is allowed, the real issue in controversy between the parties can be identified and resolved for rendering comprehensive and substantial justice to the parties. If the proposed amendment is not allowed, the very filing of the suit will go waste.

6. In this view of the matter, this Court is not inclined to interfere with the order of learned Subordinate Judge, Yanam, in I.A. No.66 of 2018 in O.S. No.31 of 2016, dated 12.10.2018, and the same is confirmed. The learned trial Judge, is directed to frame appropriate issue with regard to the claim of adverse possession by the petitioner and prayer for recovery of possession which is now sought by the respondent and dispose the matter on merits and in accordance with law.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

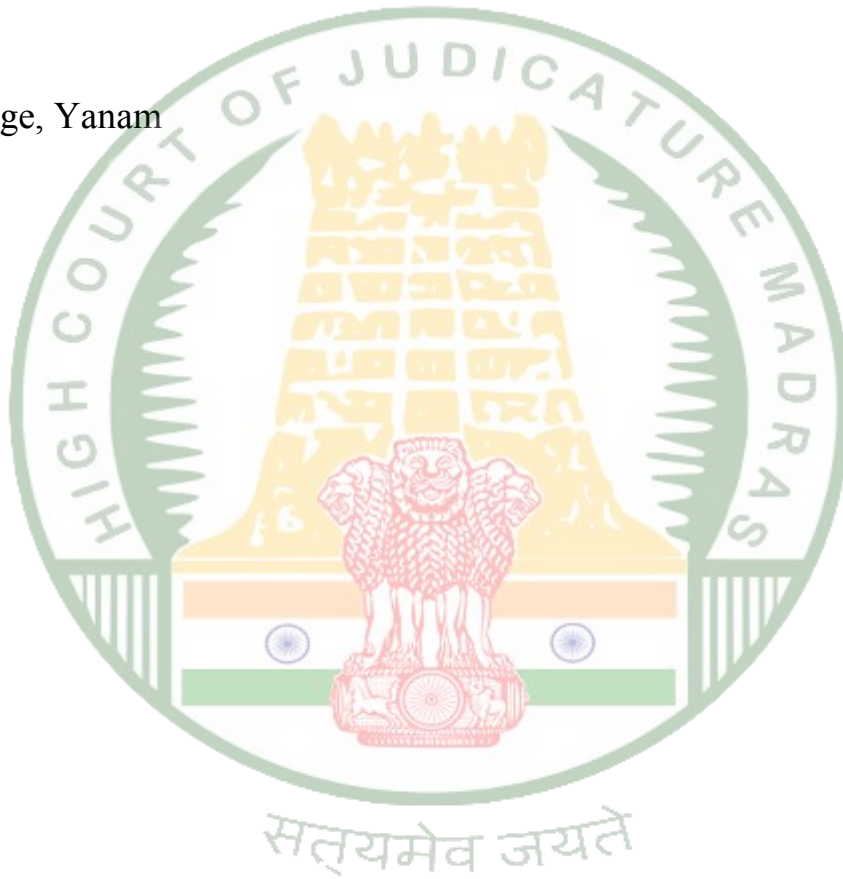
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Index: Yes / No

Speaking order / Non speaking order
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The Sub Judge, Yanam



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G.CHANDRASEKHARAN. J.,

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