

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 03.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P. (PD) No.419 of 2021

and

C.M.P.No.3600 of 2021

Manickam

...Petitioner

Vs

Akash

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the District Munsif Court, Sankarapuram, Kallakurichi District in I.A.No.1293 of 2018 in O.S.No.309 of 2013 dated 23.01.2019 and to dismiss the Interlocutory Application.

For Petitioner : Mr.V.Gunasekar

ORDER

The limited prayer sought for in the present petition is to set aside the fair and decreetal order passed by the District Munsif Court,

Sankarapuram, Kallakurichi District in I.A.No.1293 of 2018 in O.S.No.309 of 2013 dated 23.01.2019 and to dismiss the Interlocutory Application.

2. Originally, the suit in O.S.No.309 of 2013 was filed by the plaintiff/petitioner herein to pass the decree and judgement in favour of the plaintiff and against the defendant, his men and agents;

(i) Restraining the defendant, his men and agents from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff, by means of permanent injunction;

(ii) Award costs of the suit payable to the plaintiff by the defendant.

3. Thereafter, the respondent herein had filed the I.A.No.1293 of 2018 to amend the plaint for declaration of title and recovery of possession.

4. The learned counsel for the petitioner would submit that the I.A.No.1293 of 2018 was filed for amendment to the plaint for seeking

permanent injunction and declaration, recovery of possession, which came to be allowed on 23.01.2019. Further, it is contented that the learned trial Judge, who heard the application, concluded that the amendment sought for in I.A., is highly belated as being of post trial. In view of the proviso to order 6 Rule 17 of C.P.C., the Court below ought not to have allowed the plaintiff to amend the plaint. Further, the learned counsel states that the S.A.No.755 of 2008, which was filed by the plaintiff's father, was dismissed on 18.01.2013. The respondent does not disclose any reason as to why the plaintiff did not file the application before trial. Hence, the learned counsel for the petitioner prays to allow this petition.

5. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

6. It is seen from the adjudication orders, the amendment application was filed after a lapse of 6 years, which is against the Provisions of Order 6 Rule 17. The Provisions under Order 6 Rule 17 reads as follows:

"The Proviso clearly says no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion, that inspite of due diligence, the party could not have raised the matter before commencing the trial."

7. This Court is of the view that originally the suit in O.S.No.309 of 2013 was initiated in the year 2013 by the petitioner for permanent injunction and the respondent herein has filed the I.A.No.1293 of 2018 for amendment, which came to be allowed. Now, this Court is inclined to direct the District Munsif Court, Sankarapuram, Kallakurichi District to dispose of the suit in O.S.No.309 of 2013 within a period of one year from the date of receipt of copy of this order.

8. The respondent is at liberty to file his Additional Written Statement in the pending suit in O.S.No.309 of 2013. The parties are directed to co-operate with the proceedings without taking unnecessary adjournments.

9. With the above directions, this civil revision petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

03.03.2021

Index: Yes/No
Speaking order/Non-Speaking Order
sbn

To

The District Munsif Court,
Sankarapuram, Kallakurichi.

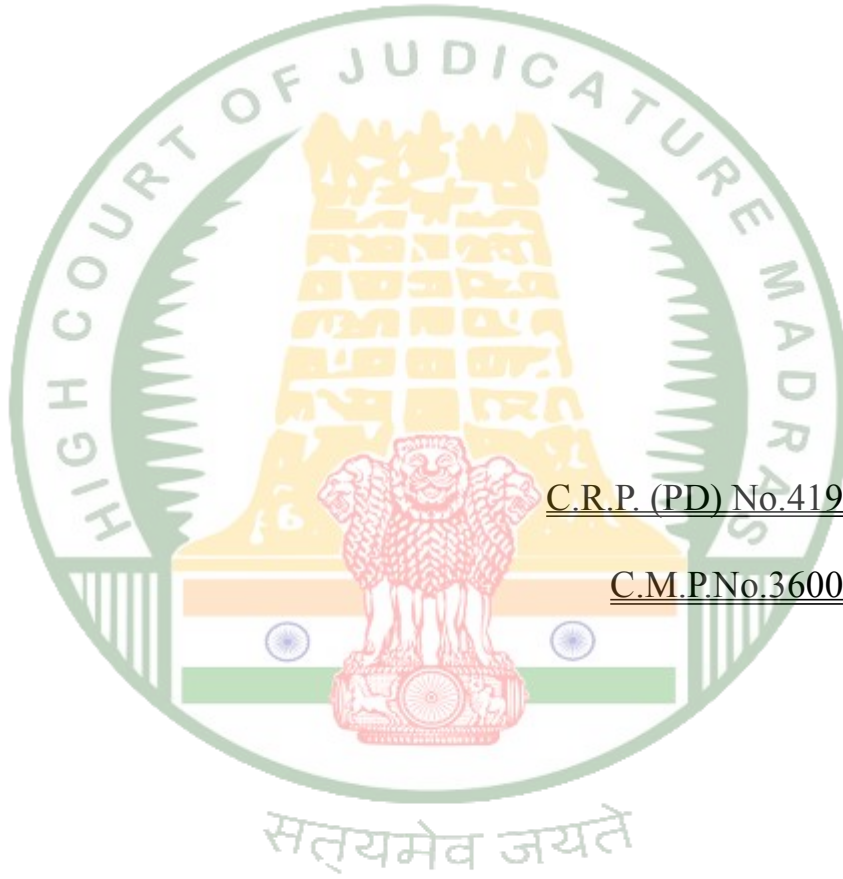


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V.BHAVANI SUBBAROYAN, J.

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