

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD)No.3867 of 2016
and CMP No.19671 of 2016

Prabavathi ... petitioner

Vs.

1. R.Raghu
2. P.Sivakumar ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 02.11.2016 in IA.No.142 of 2016 in OS.No.51 of 2015 on the file of the District Munsif, Sholinghur.

For Petitioner : Mr.A.Gowthaman
For Respondents : Mr.G.Poonkundran for R1.
No appearance for R2.

ORDER

(This case has been heard through video conference)

This civil revision petition has been filed seeking to set aside the order and decree dated 02.11.2016 made in IA.No.142 of 2016 in OS.No.51 of 2015 on the file of the District Munsif, Sholinghur.

2. The brief facts :-

The petitioner is the plaintiff in OS.No.51 of 2015 pending on the file of the District Munsif, Sholinghur. The suit has been filed by the petitioner/plaintiff seeking to declare the plaintiff's right and title over the plaint schedule properties and to grant permanent injunction against the defendants, their men, agents and servants restraining them from in any way interfering with plaintiff's possession and enjoyment of the suit property. The respondents/defendants had filed counter denying the averments and the respondents/defendants had stated that the item Nos.1 and 2 in the suit schedule properties were purchased by the defendants father Rangasamy Naidu vide sale deed dated 05.12.1985 and thereafter his father had during the year 2013 settled it in favour of the respondents/defendants and that the petitioner who is aware of all the proceedings had filed vexatious suit to defeat the right of the defendants. At that stage, the petitioner/plaintiff had filed petition under Order VI Rule 17 seeking to amend the plaint stating that during the pendency of the suit, the respondents/defendants had trespassed into the property on 08.05.2016, thereby the amendment was sought for seeking the relief of recovery of possession of the first item of the plaint schedule property.

The petitioner/plaintiff had also filed necessary Court fees for the same and stated that the petition filed under Order VI Rule 17 did not alter the nature of the suit. However, by an impugned order dated 02.11.2016, the trial judge finding that no evidence has been let in by the petitioner/plaintiff to prove that the respondents/defendants had trespassed into the property on 08.05.2016 had dismissed the petition, against which, the present civil revision has been filed.

3. The learned counsel for the petitioner would submit that the petitioner was in possession of the property and since the respondent interfered the petitioner had filed the suit seeking to declare the plaintiff's right and title over the property and for permanent injunction against the defendants. Whereas during the pendency of the suit, the respondents/defendants trespassed into the property warranting the petitioner to file petition under Order VI Rule 17 to amend the plaint seeking for recovery of possession. Only due to the encroachment by the respondents/defendants during the pendency of the suit, the petitioner was compelled to file the petition. Whereas, the trial judge on a wrong premises stating that no materials had been furnished by the petitioner to

prove that the petitioner was in possession earlier and that nothing had been filed to prove that the respondent had trespassed into the property on 08.05.2016, had dismissed the petition. The petition does not alter the nature of the suit and ultimately in the event of the petitioner succeeding the suit, the petitioner has to obviously file a petition for recovery of possession. Only in order to avoid multiplicity of proceedings, the petitioner/plaintiff had filed the present petition. The petitioner will be able to let in evidence in the course of trial, whereas, the trial judge had erroneously held that the petitioner had not let in any evidence, thereby he would seek to set aside the order of the trial Court and permit the petitioner/plaintiff to amend the plaint.

4. Mr.G.Poonkundran, the learned counsel appearing for the first respondent would submit that the suit itself is a vexatious suit to harass the respondents. The plaintiff was never in possession of the property. The respondents family was in possession right from the year 1985, when it was purchased by the father of the first respondent's and thereafter the father of the first respondent had settled it in his favour during the year 2013. Whereas the petitioner had falsely averred as if the

respondents have trespassed into the property on 18.05.2016. The trial judge rightly finding that no evidence has been furnished by the petitioner/plaintiff to prove that she was in possession earlier and that the respondents had trespassed into the property on 18.05.2016 had rightly dismissed the petition seeking amendment.

5. The learned counsel would reiterate that the petition itself is nothing but an abuse of process of law to delay and protract the proceedings. Knowing fully well that the petitioner/plaintiff will not succeed in the suit has filed the petition to delay the proceedings. Further, after the dismissal of the petition the trial has commenced.

6. In reply, the learned counsel for the petitioner would submit that the petitioner had immediately filed the revision and that the amendment of plaint will not alter the nature of the suit.

7. Heard the counsels and perused the impugned order and materials on record.

8. The petition seeking to amend the plaint has been filed, even before the commencement of trial. The petitioner had paid necessary Court fee. Even if the petitioner had not been in possession earlier, when the suit for declaration has been filed, the consequential prayer would have to seek for recovery of possession. This Court is of the opinion that by amending the plaint, the nature of the suit will not be altered. However, the respondents/defendants have to be given an opportunity to file additional written statement and the petitioner/plaintiff is bound to prove that the respondents/defendants trespassed into the property on 08.05.2016 by letting in evidence.

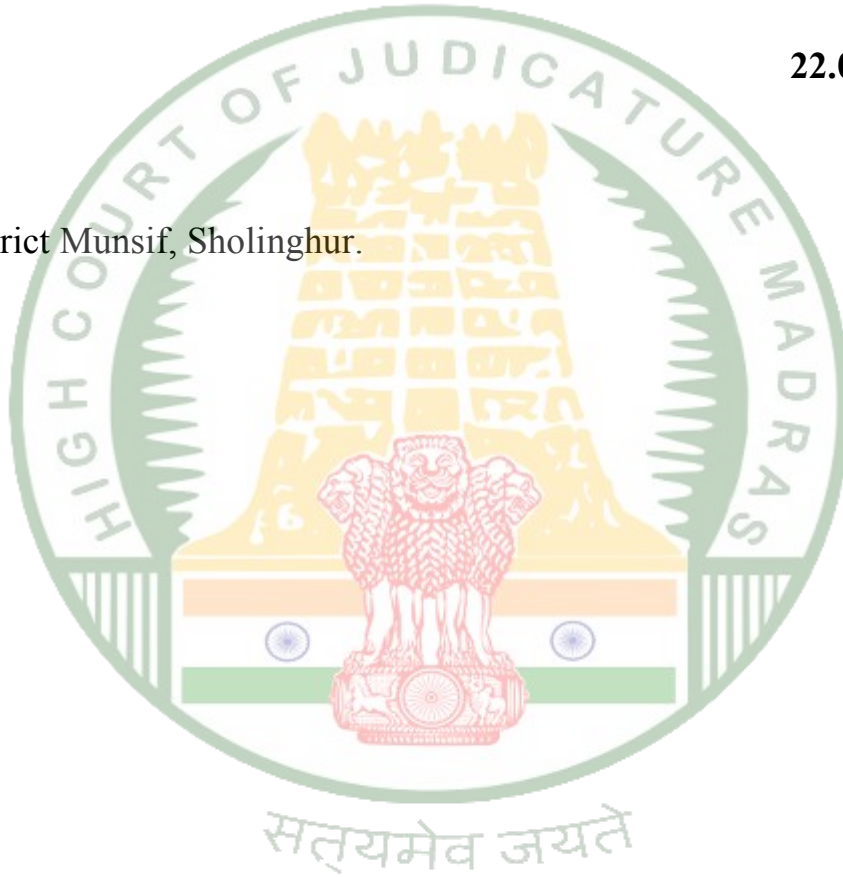
9. In view of the above, the civil revision petition stands allowed. The order dated 02.11.2016 made in IA.No.142 of 2016 in OS.No.51 of 2015 on the file of the District Munsif, Sholinghur stands set aside. The amendment is ordered in IA.No.142 of 2016 in OS.No.51 of 2015. The respondent is entitled to file additional written statement if necessary, based on which, the trial Court shall proceed in accordance with law, after framing additional issues. Since, the suit is of the year, the trial Court shall give priority to the same and see that the

suit is disposed of within a period of nine months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2021.

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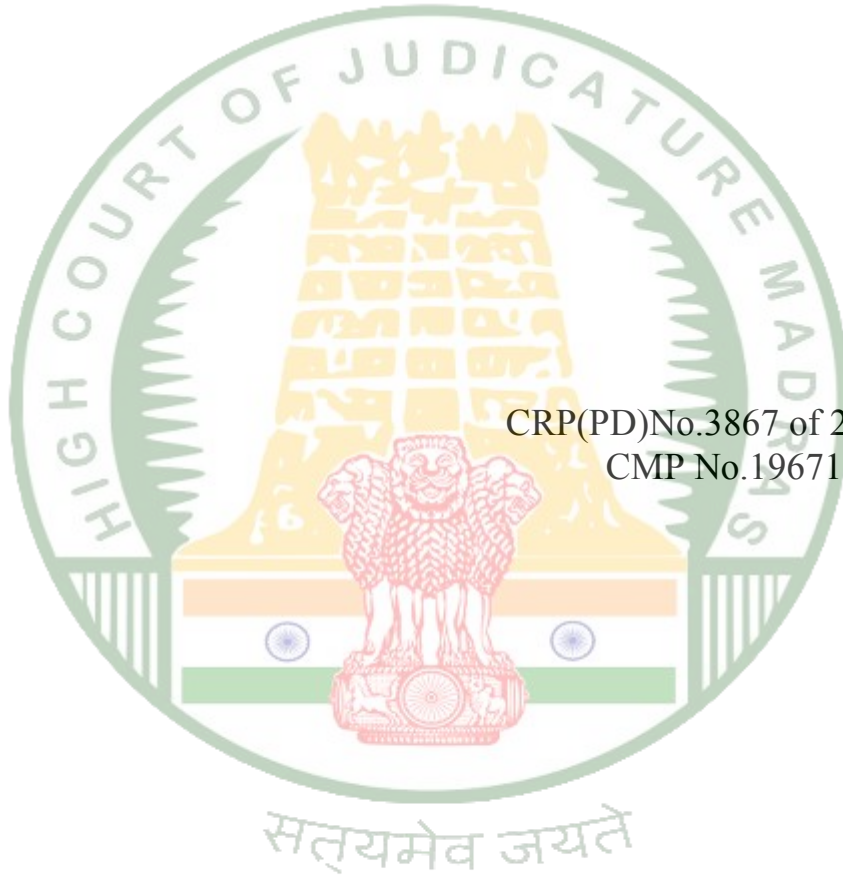
To
The District Munsif, Sholinghur.



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A.D. JAGADISH CHANDIRA, J.,

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