

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17.09.2021

Coram::

THE HONOURABLE Mr.JUSTICE G.CHANDRASEKHARAN

C.R.P(NPD).No.1822 of 2021
& C.M.P.No.14122 of 2021

1. S.Loganathan,
S/o.Shanmuga Gounder,

2. Gandhimathi,
W/o.Loganathan

... Petitioners

/versus/

1. Poosamani,
S/o.Nachimuthu Gounder,

2. Ramathal,
W/o.Poosamanim,

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 16.04.2021 made in E.A.No.03 of 2019 in E.P.No.20 of 2014 in O.S.No.168 of 2008, on the file of District Munsif Court, Perunthurai.

For Petitioners

: Mr.S.Sounthar,

For Respondents

: Mr.S.Kaithamalai Kumaran

ORDER

This Petition is filed challenging the order passed in E.A.No.3 of 2019 in E.P.No.20 of 2014 in O.S.No.168 of 2008 on the file of the District Munsif Court, Perunthurai.

2. The Learned Counsel for the petitioners submitted that the respondents filed a suit in O.S.No.168 of 2008 against the petitioners seeking the relief of demarcation of boundaries, permanent injunction and remove the coconut trees grown in the property of the petitioners leaping into the property of the respondents. The respondent filed E.P.No.20 of 2014. In the prayer, the respondents asked only to enforce the decree with regard to demarcation of boundaries. There is no prayer with regard to removal of coconut trees, which are leaping into the respondents land. It is further submitted that, the respondents filed E.A.No.3 of 2019, for amending the relief column No.10 in the execution petition and for including the relief of direction for removal of coconut trees leaping from the land of the petitioners into the lands of the respondents.

3. This petition was contested by the petitioners. However, the

Learned District Munsif Judge, Perunthurai, allowed the petition, without considering the fact that the relief now sought for is barred by limitation. Therefore, the Learned Counsel for the petitioners prays to set aside the order passed by Learned District Munsif Judge, Perunthurai, for dismissing the amendment petition.

4. The Learned Counsel for the respondents submitted that the omission to include in the prayer which is now sought to be impleaded by way of amendment, is only a clerical error by oversight. It is also submitted that, in column No.7 of the execution petition, it is clearly mentioned about the relief claimed. Only in column No.10, there was no specific mention about the removal of coconut trees, which is now sought to be rectified by way of amendment. The Learned District Munsif, Perunthurai, has considered the issue properly and therefore, the Learned Counsel for the respondents prays for dismissal of this petition.

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5. Considering the rival submissions made by the Learned Counsels and perused the records.

6. The issue involved in this case is whether an omission to seek

removal of coconut trees, which are grown in the petitioner's land leaping into the lands of the respondents? As rightly pointed out by the Learned Counsel for the respondents that, in column No.7 of the execution petition, the terms of decree had been clearly stated. Only in column No.10 of the execution petition, there was an omission with regard to removal of coconut trees. Apparently, as submitted by the Learned Counsel for the respondents that, it appears to be an omission by mistake and oversight. It cannot be said that, the prayer for removal of coconut trees is barred by limitation. That apart, there is a decree of perpetual injunction. So far as perpetual injunction is concerned, this relief shall not be subjected to any kind of limitation. When there are two reliefs, viz., perpetual injunction and mandatory injunction granted, we have to take only the limitation prescribed for perpetual injunction. Since there is no limitation prescribed for perpetual injunction and only in the prayer column the mandatory injunction is omitted, the amendment can be entertained now.

7. This Court is of the considered view that, the Learned District Munsif, Perunthurai, has rightly allowed the petition for amendment for including the prayer for removal of coconut trees which are grown in R.S.No.82/5 leaping into the respondents land in R.S.No.82/7. This Court finds no reason to interfere

the order passed by the Learned District Munsif, Perunthuari. Accordingly, the ***Civil Revision Petition is dismissed.*** It seems that the execution petition is pending from the year 2014. The Learned District Munsif, Perunthurai, is directed to dispose of the Execution Petition as expeditiously as possible, preferably, within a period of three months, from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

17.09.2021

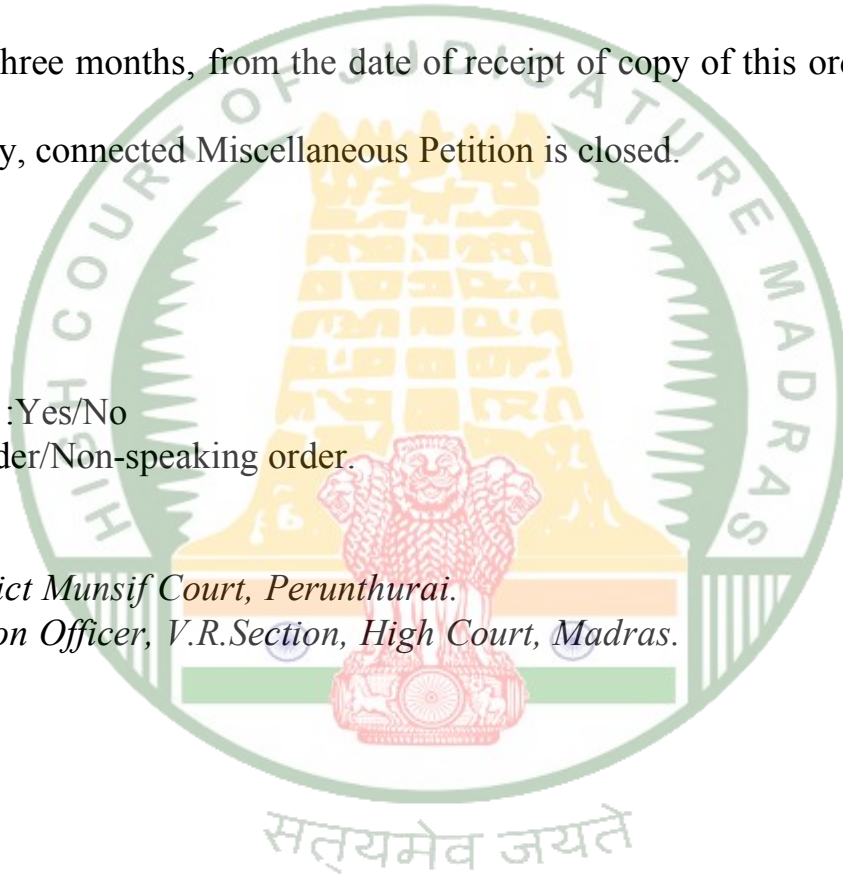
Index :Yes/No

Speaking order/Non-speaking order.

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To:-

1. *The District Munsif Court, Perunthurai.*
2. *The Section Officer, V.R.Section, High Court, Madras.*



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G.CHANDRASEKHARAN,J.

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