

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.K. ILANTHIRAIYAN

C.R.P.(PD).No.2830 of 2017

1.Kannappan

2.R.K.Karthikeyan

3.Sakthivel

... Petitioners

-Vs-

Pazhani

S/o.Natanasabapathy

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal orders passed in I.A.No.216 of 2017 in O.S.No.114 of 2009 on the file of the Court of Additional District Munsif, Chidambaram dated 25.04.2017 and dismiss the said I.A by allowing this Civil Revision Petition.

For Petitioners : Mr.A.Muthukumar

For Respondent : Mr.P.R.Thiruneelakandan

ORDER

The Civil Revision Petition has been filed as against the order passed in I.A.No.216 of 2017 in O.S.No.114 of 2009 on the file of the Court of Additional District Munsif, Chidambaram dated 25.04.2017 and to allow

this Civil Revision Petition.

2.The respondent herein filed a suit in O.S.No.114 of 2009 on the file of the Principal District Munsif, to remove the encroachment in the common path way. The petitioners are the defendants in the suit . Pending the suit, the respondent filed a petition for amendment on three occasions and the same were allowed, aggrieved by the same, the present Civil Revision Petition is filed.

3.The suit is of the year 2009. The Advocate Commissioner was appointed and thereafter, the suit was dismissed for default and again the suit was restored. The respondent filed a amendment petition on 2 occasions and both the applications were allowed. Pending the suit, a 3rd amendment petition was filed for seeking amendment to include new suit property in the suit filed by the respondent herein. According to the petitioners, the amendment sought for changes the cause of action and also the nature of the suit and it is alleged that instead of filing a fresh suit in respect of the third item of the suit property, the respondent has filed a petition for including a third item of suit property. Hence, this Civil Revision Petition came to be

filed.

4.It is the case of the respondent that during the pendency of the suit, the third amendment petition was filed since the petitioners have encroached the common both way and put up a construction and therefore, he necessarily ought to have filed the amendment petition to include the third item of the property for the land relief.

5.Heard, Mr.A.Muthukumar, learned counsel for the petitioners and Mr.P.R.Thiruneelakandan, learned counsel appearing for the respondent and perused the materials available on record.

6.On perusal of the records it is seen that the respondent filed a suit for declaration and injunction against the defendants to restrain the defendants from interfering into the peaceful possession and enjoyment of the common path way. While pending the suit, the petitioners have encroached the suit property and also put up a construction. Thereafter, the respondent come forward with the petition for amendment to include the

third item of the property in the suit and also sought mandatory injunction, directing the petitioners to remove the illegal construction put up in the common path way.

7.The Advocate Commissioner was appointed in the year 2009 and also he gave a report in the year 2017, wherein, it is stated that the land was encroached by the petitioners. Therefore, the respondent filed a petition for amendment to include the third item of the property in the suit.

8.The third item of the property is nothing but passage of the property comprised in Survey No.72 of 2011. The main prayer of the suit is to remove the encroachment in the common pathway. Therefore, the third item of the suit property, which was sought to be included in the suit prayer, also needs to be included in the schedule of properties.

9.Considering the above facts and circumstance of this case, this Court does not find any infirmity or illegality in the order passed in I.A.No.216 of 2017 in O.S.No.114 of 2009 on the file of the Court of

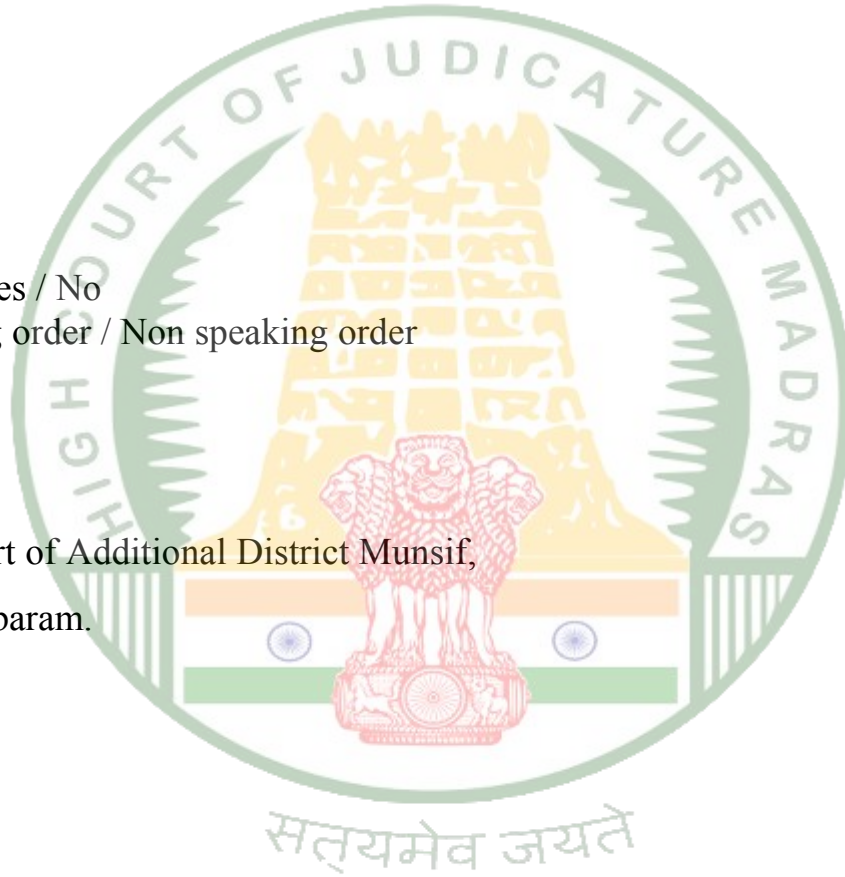
Additional District Munsif, Chidambaram dated 25.04.2017. Hence, this Civil Revision Petition is dismissed. However, the suit is of the year 2009, therefore, this Court directs the trail Court to disposed of the suit within a period of 6 months from the date of receipt of copy of this order. No Costs.

16.03.2021

Index: Yes / No
Speaking order / Non speaking order
tta

To

The Court of Additional District Munsif,
Chidambaram.



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G.K. ILANTHIRAIYAN, J.

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