

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD)No.3702 of 2018
and C.M.P.No.20591 of 2018

Arulmigu Eratti Vinayagar alias Sitthi Vinayagar
Temple,
rep. by its Managing Trustee C.Subrmanian,
Chettithangai & Post,
Kattumnarkoil Taluk,
Cuddalore District 608 304.

... Petitioner

Vs.

1.Saroja,

2.Land Surveyor,
Thasildar Office,
Chettithangal Village,
Kattumanarkoil.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal order dated 19.06.2018 passed in I.A.No.143 of 2018 in O.S.No.54 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Kattumannarkoil.

For Petitioner : Ms.Diana
for Mr.Saikrishnan

For Respondents : Mr.G.Pugazhenthir for R1.

ORDER

Challenging the fair and final order passed in I.A.No.143 of 2018 in O.S.No.54 of 2013 by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, the plaintiff has preferred this revision.

2.The brief facts of the case are that a suit in O.S.No.54 of 2013 was filed by the petitioner originally for permanent injunction. Thereafter, they sought for an amendment to include the prayer for mandatory injunction. After examining P.W.1 and marking 18 documents, an application in I.A.No.143 of 2018 has been filed for amendment to include the prayer for declaration and recovery of possession. The learned District Munsif cum Judicial Magistrate, Kattumannarkoil, has dismissed the said application. Aggrieved over the same, the petitioner has come over with this revision.

3.The learned counsel appearing for the petitioner argued that the suit property belongs to the temple and the present petition was dismissed on the sole ground that the property was not properly valued and court fee was not paid. The learned counsel further submits that the petitioner is ready to file a fresh application with all particulars and also ready to pay necessary court fee.

4.The learned counsel appearing for the first respondent vehemently opposed the prayer of the petitioner contending that the learned Judge not only dismissed the application on the ground that the property was not properly valued, but it was dismissed on the ground that the earlier application was also filed for amendment and the suit is in part-heard stage and prays for dismissal of the petition.

5.Heard the rival submissions of the learned counsel and perused the materials available on record.

6. In the instant case it is an admitted fact that originally the petitioner sought for permanent injunction and thereafter an amendment was permitted to include a prayer for mandatory injunction in I.A.No.47 of 2015 vide order dated 30.11.2015. The plaintiff has clearly averred that the plaintiff Temple has been in possession of the suit property and there was an attempt by the defendant to encroach the same. Subsequently in the earlier application, it was stated that the defendants has started putting up construction and hence it is to be removed by issuing mandatory injunction.

7. In the light of the averments made in the plaint, in my considered opinion that the amendment application has to be allowed, but the trial Judge has dismissed the application on the ground that property was not properly valued and necessary Court fee was not paid. In the light of the submission of the learned counsel for the petitioner that his client is willing to file a fresh application with correct value of the property and also ready to pay necessary Court fees, the present petition is closed granting permission to the petitioner to file a fresh application.

8.Accordingly, this Civil Revision Petition is closed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes

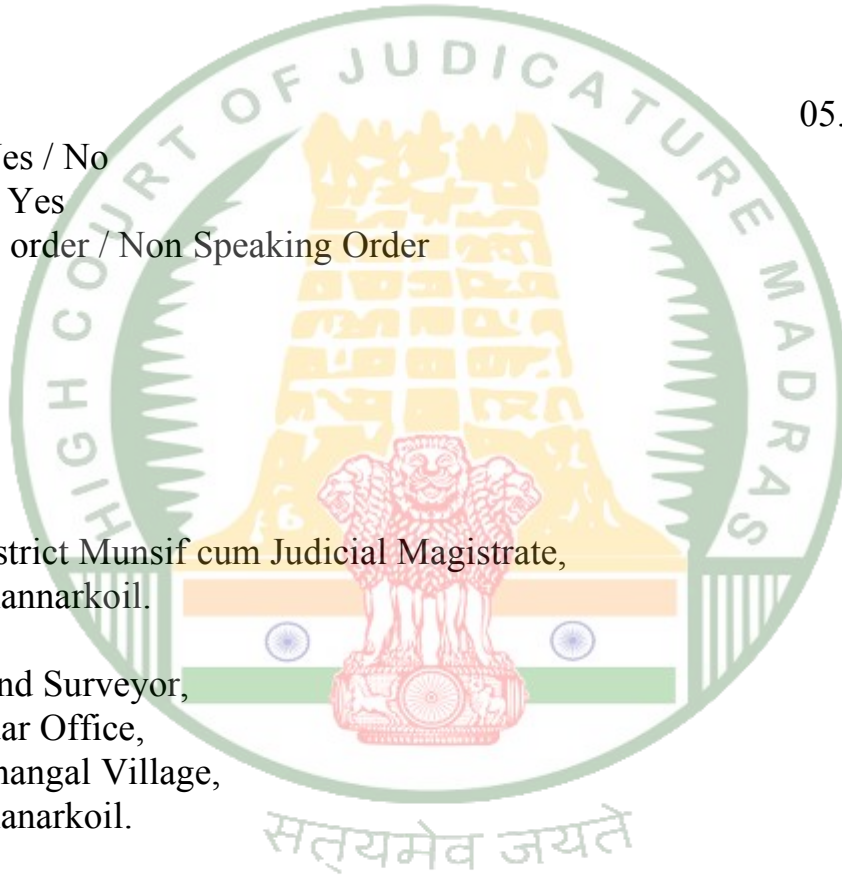
Speaking order / Non Speaking Order

rm

To

1.The District Munsif cum Judicial Magistrate,
Kattumannarkoil.

2.The Land Surveyor,
Thasildar Office,
Chettithangal Village,
Kattumanarkoil.

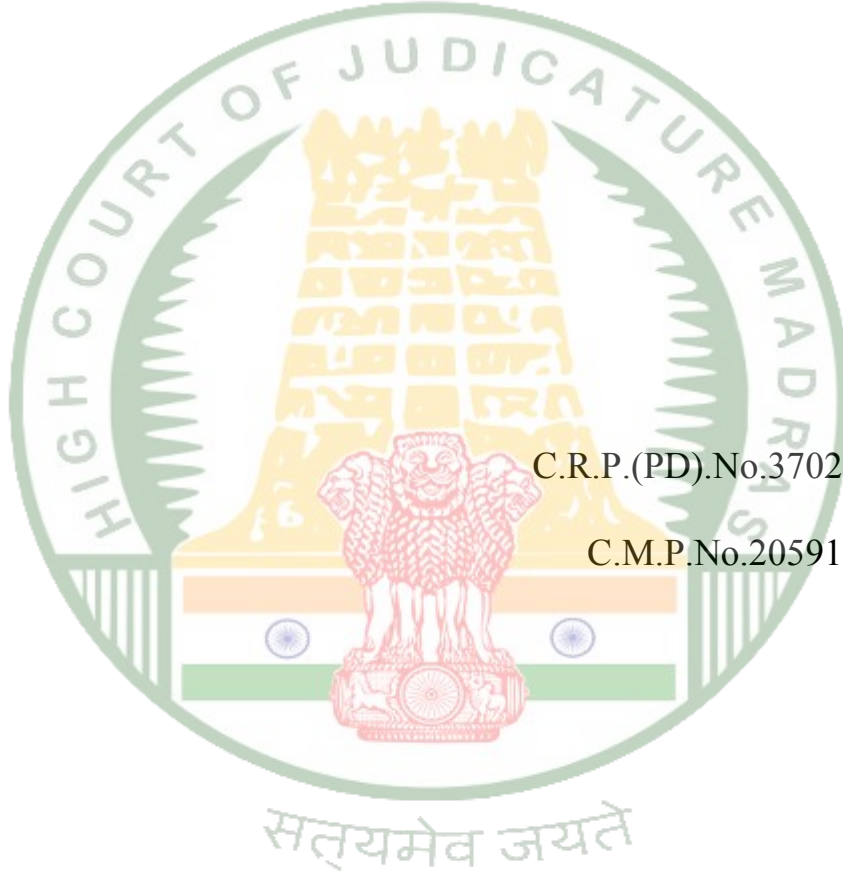


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K.KALYANASUNDARAM, J.

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