

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (PD) No.3877 of 2018

and

CMP No.21589 of 2018

G.Kalavathy

...

Petitioner

Vs

Tamilarasi

...

Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 11.07.2018 made in I.A.No.1873 of 2017 in O.S.No.293 of 2011 on the file of the I Additional District Munsif Court, Bhavani.

For Petitioner : Mr.A.Veerasingam
For Respondent : Mr.B.Kumarasingam

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 11.07.2018 made in I.A.No.1873 of 2017 in O.S.No.293 of 2011 on the file of the I Additional District Munsif Court, Bhavani, thereby dismissing the petition seeking amendment of plaint to include the prayer of declaration.

2. The revision petitioner is the plaintiff and the respondent is the

defendant. The petitioner filed a suit in O.S.No.293 of 2011 for bare injunction in respect of the suit property. In the plaint, the petitioner categorically averred that in respect of the suit property, the fraudulent and collusive decree obtained by the defendant in O.S.No.614 of 1992 and it is not binding upon the petitioner herein. Further, the claim of the defendant is also barred by limitation. Thereafter, the Trial was commenced and the suit was posted for further evidence of defendant side, that too after a period of six years from filing of the suit.

3. The petitioner come forward with the petition to amend the plaint, thereby to include the following prayer :

“1) List of amendment to be included in the plaint
Para XV in the prayer column as follows :

Therefore the plaintiff prays that this Hon'ble Court
may be pleased to grant a decree.

a) to declare that the preliminary decree passed
against the plaintiff in the absence of her, in favour of the
defendant on the file of the O.S.No.614 of 1992 before
the I Additional District Munsif Court, Bhavani, dated
17.04.1997 is null and void, and not binding on the
plaintiff; and

b) Column (a) becomes (b)

Column (b) becomes (c)

Column (c) becomes (d)

2) To delete the plaint para XIV and substitute the same as follows :

Value of the suit for the purpose of Court Fees and Jurisdiction is Rs.1105/- and a Court fee of Rs.78.65 is paid under Section 40 & Section 27(c) of Tamil Nadu Court Fees and Suit Valuation Act.”

4. A perusal of the affidavit filed in support of the petition seeking amendment of plaint to include the prayer of declaration reveals that the plaint is originally filed in the year 2011. The impleading of the petitioner/plaintiff in the collateral proceedings in O.S.No.614 of 1992 in the final decree application, only in the year 2016 nearly five years after this suit despite the knowledge of the bonafide transactions even in the year of 2011.

5. As stated supra, even at the time of filing the plaint itself, she categorically averred that the decree passed in O.S.No.614 of 1992 as against the petitioner/vendor. After lapse of six years, the present petition has been filed, that too, when the suit was posted for further evidence of defendant side. It is nothing but to fill up the lacuna. Therefore, the Court below rightly dismissed the petition seeking

amendment of plaint to include the prayer of declaration.

6. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Hence, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

16.07.2021

Speaking/Non-speaking order

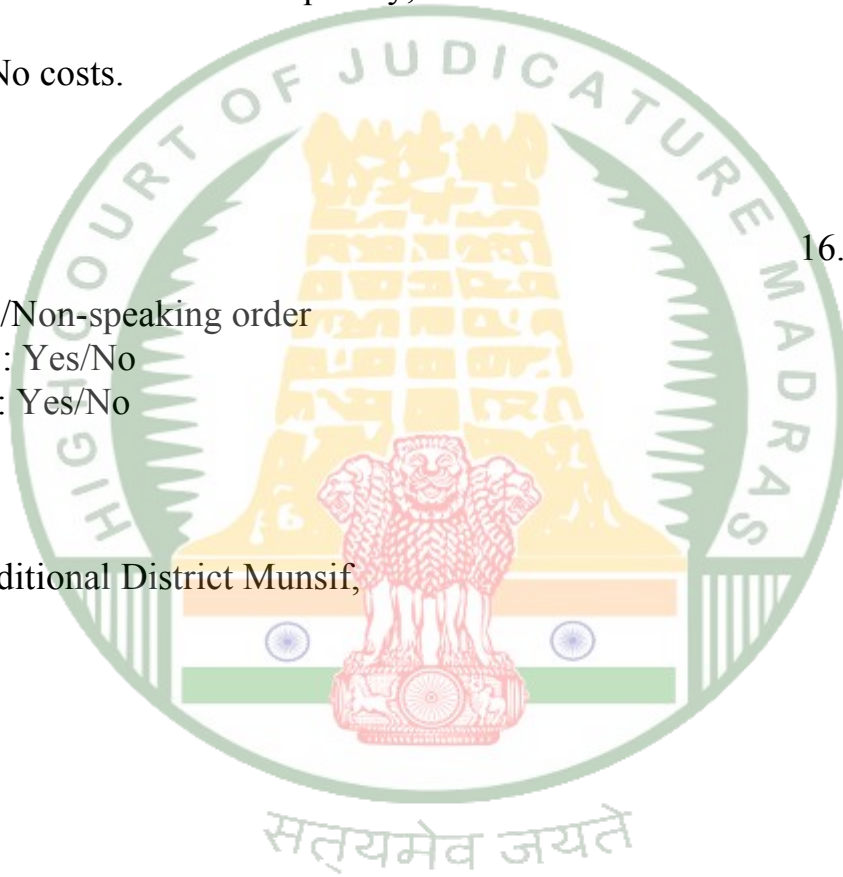
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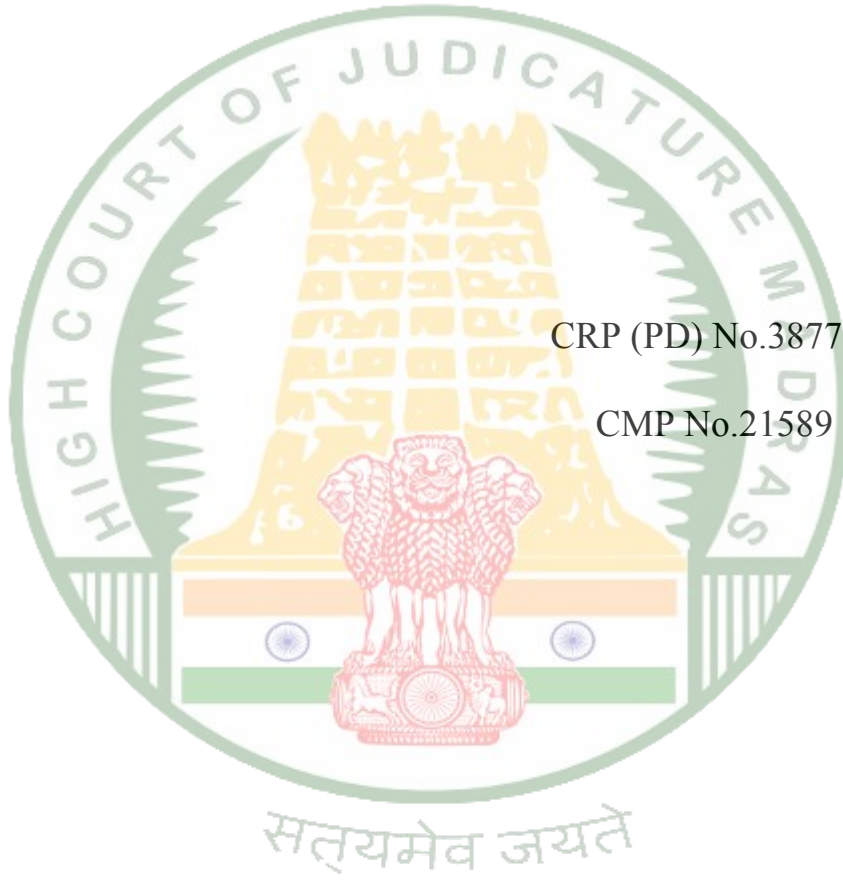
The I Additional District Munsif,
Bhavani.



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G.K.ILANTHIRAIYAN,J.

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