

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.1598 of 2017
and
C.M.P Nos.7541 and 7542 of 2017

Nanjappa Gounder .. Petitioner

Vs

K.D. Ramaswamy .. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, seeking to set aside the order dated 26.09.2016 in I.A. No. 923 of 2015 in O.S. No. 1702 of 2013 on the file of the 1st Additional District Munsif, Coimbatore.

For Petitioner : Mr. M. Velmurugan

For Respondent : Mr. N. C. Ramesh, Sr. Counsel
for Mr. R. Lakshmi Narasimhan

ORDER

This Civil Revision Petition arises against the order dated

26.09.2016 passed in I.A. No. 923 of 2015 in O.S. No. 1702 of 2013 by the 1st Additional District Munsif, Coimbatore.

2. The learned counsel for the revision petitioner submitted that the respondent filed a suit in O.S. No. 177 of 2003 before the District Munsif Court, Avinashi, seeking for the relief of permanent injunction. In the said suit, the petitioner herein/ defendant filed his written statement on 27.01.2004, making a specific averment that the petitioner is in possession and enjoyment of the suit property, as per the sale agreement dated 11.04.2003. The suit was posted for trial and cross examination. Subsequently, the suit was transferred to I Additional District Munsif Court, Coimbatore and renumbered as O.S. No. 1702 of 2013. After recording evidence on the side of the respondent, the suit was posted for arguments. At that stage, an Interlocutory Application in I.A. No.923 of 2015 was filed under Order VI Rule 16 and 17 by the respondent, after a lapse of 12 years and that too after the evidence was concluded and posted for arguments. The learned counsel for the petitioner would submit that after concluding all the evidences of both the parties, the trial court, without appreciating the provisions under

Order VI Rule 16 and 17, has erroneously allowed the said application. Hence, the present Civil Revision Petition has been filed by the petitioner/ defendant.

3. Mr. N. C. Ramesh, the learned senior counsel appearing for the respondent/ plaintiff would submit that at the time of marking the documents, the declaration petition has been filed before the court below and therefore the trial court has rightly allowed the application. In view of the same, there is no warrant to interfere with the order of the trial court.

4. Considered the rival submissions and perused the material available on record.

5. It is not disputed that the evidence of the plaintiff and the defendant was concluded and the suit was adjourned for judgment. At that stage, the said application in I.A. No.923 of 2015 has been filed by the respondent/ plaintiff, for amending the prayer in the plaint for a separate relief for declaration, to avoid multiplicity of proceedings. It is

useful to extract the provisions under Order VI Rule 17 and the proviso.

“ Order 6 Rule 17 CPC reads thus:

“17. Amendment of pleadings:-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. ”

6. In the light of the aforesaid provisions under the Act, the decision rendered by the Hon'ble Supreme Court in **RAJESH KUMAR AGARWAL AND OTHERS Vs. K.K. MODI AND OTHERS (2006 [4] SCC – 385)** and considering the fact and the stage of suit, and no satisfactory reasons have been explained for filing the application after the evidence was concluded in the said suit. Therefore, this Court is

inclined to interfere with the order passed by the trial court and the order passed in I.A. No.923 of 2015 is set aside. However, it is made clear that this order of dismissal will not stand in the way of the respondent/ plaintiff to work out his remedy, before the appropriate forum, if it is permissible in law.

7. Accordingly, the Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No Cost.

31.10.2017

Index: Yes/ No

[Issue order copy next week i.e. 7.11.2017]
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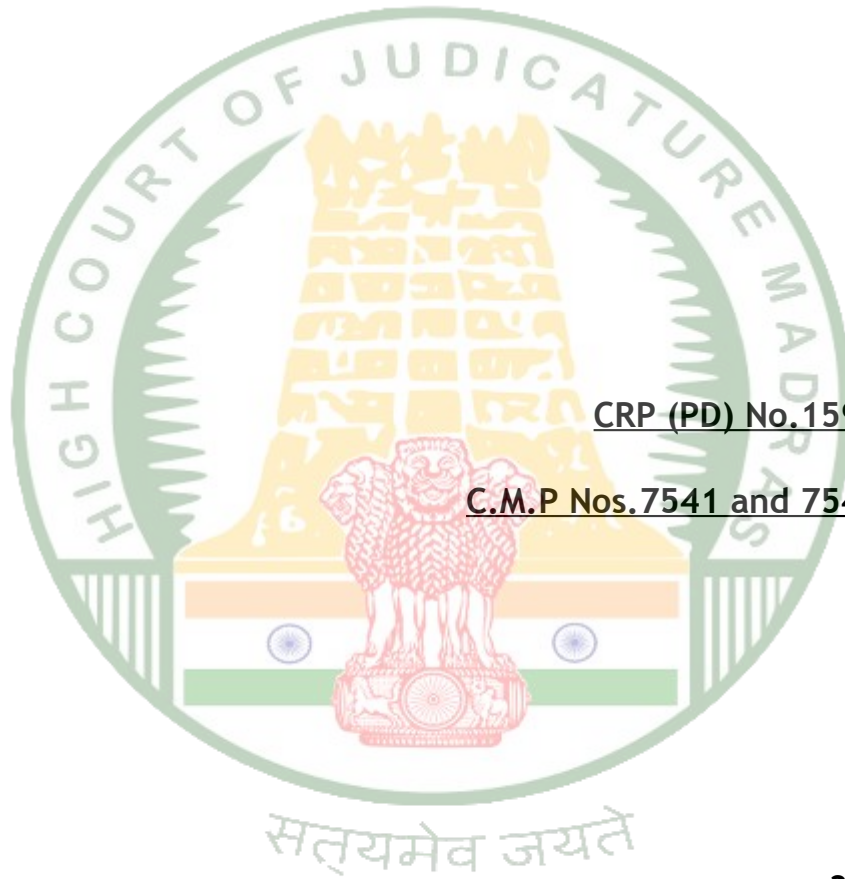
To

1. The Ist Additional District Munsif,
Coimbatore.

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D. KRISHNAKUMAR J.,

avr



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