

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1826 of 2017
and C.M.P.No.8746 of 2017

A. Senthilkumar .. Petitioner

Vs.

1. R. Krishnasamy
2. K. Nirmala
3. The Commissioner
Coimbatore City Municipal Corporation,
Coimbatore. .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A.No.608 of 2016 in O.S.Nos.577 of 2015 on the file of the learned I Additional District Judge, Coimbatore, dated 22.02.2017 and allow the revision petition.

For Petitioner : Mr. V. Sivakumar

ORDER

The Civil Revision Petition has been filed to set aside the fair and final order dated 22.02.2017 passed in I.A.No.608 of 2016 in O.S.Nos.577 of 2015 on the file of the learned I Additional District

Judge, Coimbatore.

2. The petitioner is the plaintiff and respondents are the defendant in the suit in O.S.No.1921 of 2012 on the file of the District Munsif Court, Coimbatore. The petitioner filed the suit for declaration to declare the settlement deed dated 26.07.2009 executed in favour of the second respondent by the first respondent on the file of the Joint Sub Registrar-I, Coimbatore as null and void and for permanent injunction.

3. The first respondent filed written statement on 19.03.2013, and the same was adopted by the second respondent. The third respondent independently filed written statement on 31.10.2013, and all are contesting the suit.

4. The petitioner filed an application in I.A.No.608 of 2016 for amendment of plaint to add after the plaint paragraph No.9 that he had perfected his title to the suit property by adverse possession and by ouster.

5. The respondents 1 and 2 filed counter and opposed the said

application.

6. The learned Judge, considering the fact that the petitioner is taking inconsistent plea by seeking amendment of plaint, has dismissed the application in I.A.No.608 of 2016.

7. Against the said order of dismissal dated 22.02.2017, the petitioner has filed the present civil revision petition.

8. The learned counsel appearing for the petitioner submitted that the petitioner came to know about the necessity of additional pleading, only after he had engaged the present counsel, for conducting the trial. According to the petitioner, the non-pleading of ouster and adverse possession in the plaint is the mistake of the earlier counsel, and by way of amendment, the petitioner is not introducing a new case as alleged by the respondents 1 and 2, and more so, the cause of action would not change and no prejudice would be caused to the respondents.

9. Heard the learned counsel appearing for the petitioner and perused the materials placed on record.

10. The petitioner had filed the said suit on the ground that the first respondent, without having any valid right, title and possession over the suit property, executed the settlement deed in favour of the second respondent, settling undivided share of the suit property. The act of the first respondent is a fraudulent one, which was adopted by him only with an intention to cheat the petitioner and his mother. Hence, the petitioner has prayed for declaration to declare that the said settlement deed executed by the first respondent is null and void. By amendment, the petitioner is pleading that by adverse possession and ouster, he has perfected his title. The petitioner as plaintiff is not entitled to take inconsistent plea. By amendment, the petitioner is trying to include a new case and new cause of action. It is pertinent to note that the respondents 1 and 2 filed the suit in O.S.No.672 of 2011 on the file of the I Additional District Court, Coimbatore, against the petitioner for partition of the suit property and for mandatory injunction against the Commissioner, Coimbatore Municipal Corporation, Coimbatore. In the said suit also, originally the petitioner did not take the plea of adverse possession and ouster at the time of filing the written statement, but, later, filed an application in I.A.No.607 of 2016, seeking permission to

file additional written statement. The learned Judge dismissed the said application in I.A.No.607 of 2016 in O.S.No.672 of 2011, challenging which, the revision petition in CRP (PD) NO.1825 of 2017 was filed, and this Court vide order dated 12.06.2017 has dismissed the said revision petition.

11. For the reasons stated above, this civil revision petition is devoid of merits and hence the same is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

12.06.2017

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Speaking order/Non-speaking order

Index : Yes / No

Internet : Yes / no

सत्यमेव जयते

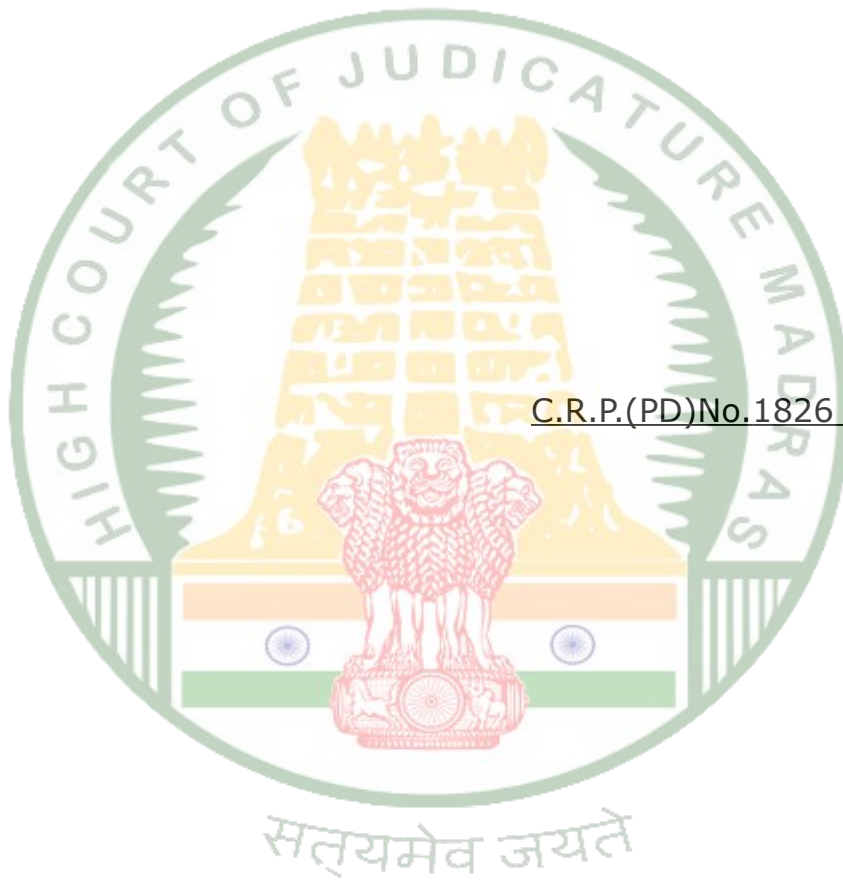
To :

The I Additional District Judge,
Coimbatore.

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V.M.VELUMANI,J.

ds



C.R.P.(PD)No.1826 of 2017

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12.06.2017