

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1920 of 2017
& C.M.P.No.9286 of 2017

1. Ayyammal
2. Pavayammal .. Petitioners

Vs.

1. Pattaiya Gounder
2. Sokkammal
3. K.K.Muthusamy
4. Manokaran
5. Gopalan
6. V.K.Palanisamy
7. Periyasamy
8. Subramaniam
9. Pappathi
10. Sakthivel
11. Gurusamy
12. Kandasamy
13. Thangavel
14. Manickam
15. Kaleeswaran
16. Bakkiyalakshmi
17. P. Kamalesan
18. Venkidusamy
19. Shanmugam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.02.2017 in I.A.No.62 of 2017 in O.S.No.103 of 2011 on the file of the I Additional District Munsif Court, Bhavani.

For Petitioner : Mr.S.K.Aithamalai Kumaran

O R D E R

This Civil Revision Petition has been filed against the fair and decretal order dated 13.02.2017 in I.A.No.62 of 2017 in O.S.No.103 of 2011 on the file of the I Additional District Munsif Court, Bhavani.

2. The petitioners are the plaintiffs and the respondents are the defendants in O.S.No.103 of 2011. The petitioners filed suit for declaration that after the death of 2nd defendant, they are entitled to suit property, as per Gift Settlement Deed dated 16.02.1981 and for permanent injunction. The 1st respondent filed written statement in the month of June 2011 and the 11th respondent filed written statement on 01.02.2016 and the same was adopted by respondents 4,6 to 10 and 12 to 19. They denied the claim of the petitioners and furnished the details of alienation in favour of the respondents 3 to 19 in respect of the suit property. Based on the pleadings, issues were framed and trial commenced. After conclusion of the trial, after hearing the arguments of the parties, when the suit was posted for Judgement on 18.01.2017, at that stage, the petitioners have filed I.A.No.62 of 2017 for amendment

to include the prayer of declaration that sale deeds in favour of respondents 3 to 19 are null and void.

3. According to the petitioners, the respondents have mentioned various sale deeds in written statements and they have to prove the genuineness of the sale deeds.

4. The respondents filed counter and submitted that the 1st respondent filed written statement in the month of June 2011 and in the written statement itself all the sale deeds executed in favour of 3 to 19 were mentioned. The petitioners cross examined D.W.1 on the document and only to drag on the proceedings, the petitioners have come out with the present application, when the suit is posted for Judgement. The petitioners are introducing a new case and if amendment is ordered, respondents will be prejudiced.

5. The learned Judge on considering the averments mentioned in the affidavit, counter affidavit and materials available on record dismissed the application.

6. Against the fair and final order in I.A.No.62 of 2017 dated 13.2.2017 the present civil revision petition is filed.

7. The learned counsel for the petitioners submitted that the petitioners are not introducing a new case and if amendment is ordered, the respondents can file additional written statement and cross examine the petitioners' witness and also let in further evidence on their behalf.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. From the records, it is seen that the respondents have furnished the details of the sale deeds in the written statement and filed all the documents. The petitioners have cross examined D.W.1 on those documents. A reading of the amendment now sought for shows that the petitioners are introducing a new case and new cause of action. The petitioners have not given any reason for taking steps for amendment earlier when the same was mentioned in the written statement filed month of June 2011. As per proviso to Order 6 Rule 17, Civil Procedure Code after commencement of

trial, the parties seeking amendment must allege and prove that inspite of due diligence, they could not have filed the petition before commencement of trial. In the present case, the petitioners have come out with the petition for amendment after the case being posted for Judgment. If the amendment is ordered, the respondents would be prejudiced. The learned Judge considering all the above facts dismissed the application.

9. In view of the above, there is no illegality or irregularity in the order of the trial Court dated 13.02.2017 warranting interference by this Court.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.06.2017

Speaking Order/Non-speaking Order

Index :Yes/No

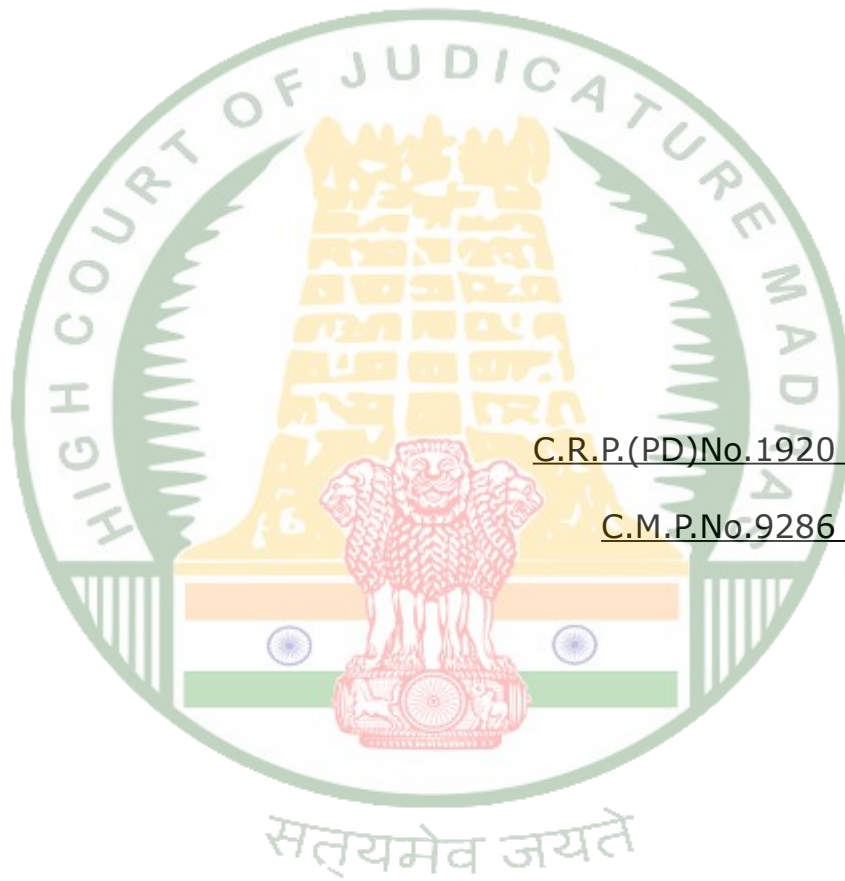
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To

The learned I Additional District Munsif Court,
Bhavani.

V.M.VELUMANI, J.

av/ssd



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