

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1939 of 2017
& C.M.P.No.9383 of 2017

Canniammalle

.. Petitioner

Vs.

Rathinasabapathy died

1.Minatchy

2.Vasuky

3.Minor.Kanagaraj

4.Minor. Mohanraj

5.Minor. Ramya

(Respondents 3 to 5 are represented by
guardian and mother of the 2nd respondent
Vasuky)

6.Poongoothai

7.S.R.Manickam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 20.04.2017 passed in I.A.No.154 of 2017 in O.S.No.3 of 1998, now pending on the file of the Principal Subordinate Judge, Puducherry, in so far it related in refusing the amendments in prayers 5, 6 and 7 are concerned.

For Petitioner : Mr.S.Subbiah, SC
for Ms.Elizabeth Ravi
For Respondents : Mr.Usha Ramman for R6

ORDER

This Civil Revision Petition has been filed against the order dated 20.04.2017 passed in I.A.No.154 of 2017 in O.S.No.3 of 1998 on the file of the learned Principal Subordinate Judge, Puducherry.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.3 of 1998. The plaintiff filed the said suit for partition by metes and bounds and separate possession of her 1/4th share in the suit property. The respondents have filed written statement and are contesting the suit. During the pendency of the trial, the first defendant died leaving behind the first respondent and the proposed respondents 6 and 7 herein as his legal heirs.

3. The petitioner filed I.A.No.105 of 2017 to implead respondents 6 and 7 as parties to the suit. The same was allowed on 08.03.2017. Thereafter, the petitioner filed the present application in I.A.No.154 of 2017 seeking permission to amend the plaint in the short and long cause title and also in the relief column. The second respondent has filed counter affidavit and it was adopted by respondents 1 and 3 to 5. The respondents have no objection to amend the plaint in respect of amendments 1 to 4. Insofar as amendments 5 to 7 are concerned, they have objection for the

reason that by way of amendments 5 to 7, the petitioner seeking new relief by introducing a new case and a new cause of action and it will change the nature of suit and prayed for dismissal of the application.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application in respect of amendments 1 to 4. But as far as amendments 5 to 7 are concerned dismissed the application holding that it would change the nature of the suit.

5. Against the order of dismissal dated 20.04.2017, in respect of amendments 5 to 7, the present civil revision petition is filed by the petitioner.

6. The learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the judgment of the Hon'ble Supreme Court in *A.A.Ganga Vs. A.R.Usha* reported in **2009 (10) SCC 84** and submitted that subsequent event also to be taken into consideration, while considering the application for amendment in order to avoid multiplicity of proceedings.

7. Heard the submission of the learned Senior Counsel appearing for the petitioner; learned counsel appearing for the sixth respondent and perused the materials available on record.

8. From the records, it is seen that in I.A.No.105 of 2017, the petitioner sought for impleading respondents 6 and 7 herein as parties to the suit alone and the same was allowed on 08.03.2017 but however in the said application, the petitioner did not seek amendment of the plaint. I.A.No.154 of 2017 is filed to carry out the order passed in I.A.No.105 of 2017. The petitioner is also seeking amendment of averments in the plaint and relief sought for also. Therefore, the learned Judge has rightly allowed the application in respect of amendments 1 to 4 and rightly dismissed the application in respect of amendments 5 to 7. Originally, the petitioner filed suit in O.S.No.3 of 1998 for partition and allotment of 1/4th share to her. Now the petitioner seeks 3/4th share based on the release deeds. It will change the nature of the suit. Therefore, the petitioner is not entitled to get the relief.

9. In view of the above reasons, this Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

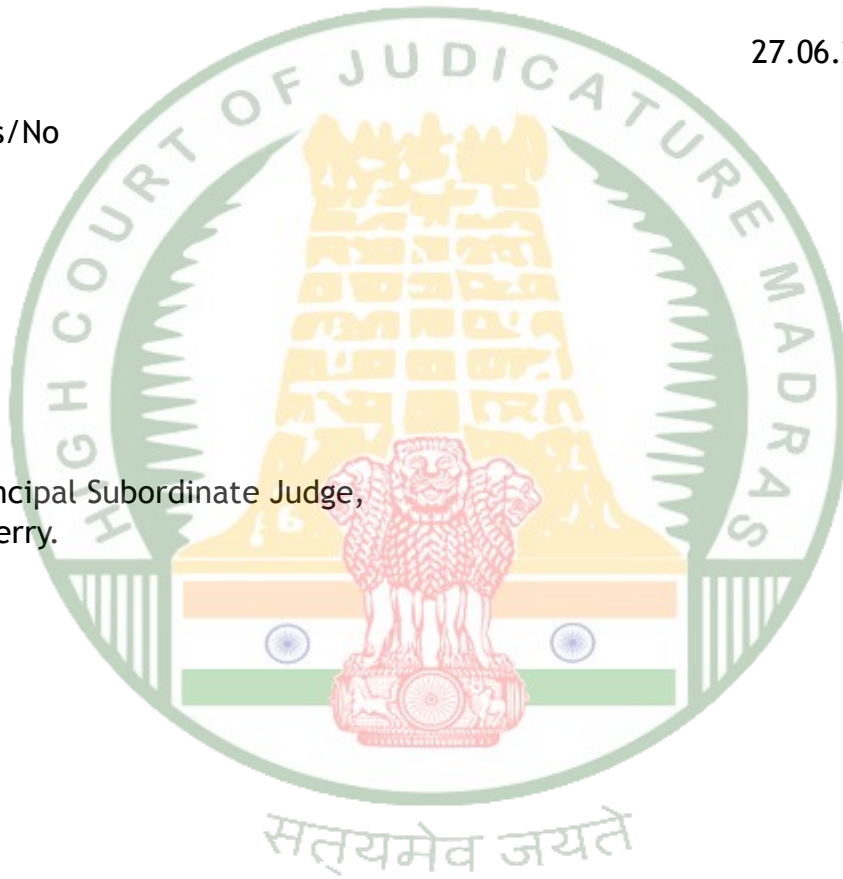
vsm

27.06.2017

Index: Yes/No

To

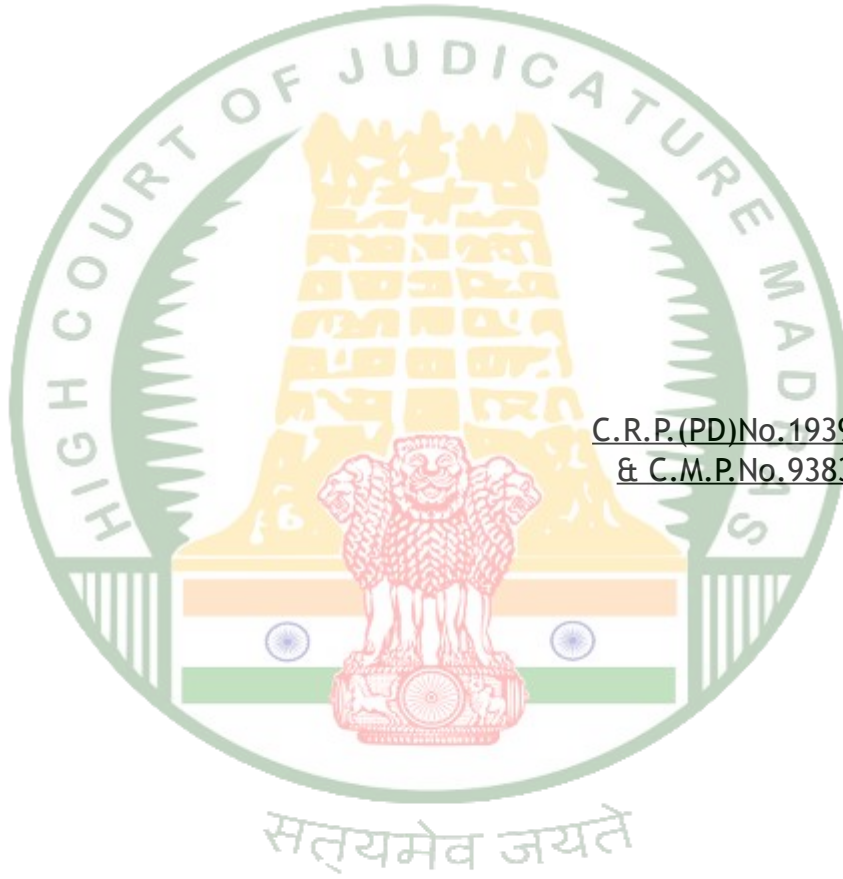
The Principal Subordinate Judge,
Puducherry.



WEB COPY

V.M.VELUMANI, J.

vsm



C.R.P.(PD)No.1939 of 2017
& C.M.P.No.9383 of 2017

WEB COPY

27.06.2017