

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
CRP (PD)No.4752 of 2017
and CMP.No.22363 of 2017

- 1.Kannammal
- 2.Ganesan
- 3.Poongavanam
- 4.Pachaiyappan
- 5.Pachaiyammal

.. Petitioners

Vs

- 1.The State of Tamil Nadu,
Rep.by the District Collector,
Tiruvannamalai.
- 2.The Tahsildar, Arni
- 3.The Block Development Officer,
Office of B.D.O. West Arni, Arni.
- 4.The Block Development Officer (Scheme)
West Arni Panchayat Union, Arni.
- 5.Sekar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 14.11.2017 in I.A.No.278 of 2017 in O.S.No.365 of 2009 on the file of District Munsif, Arni, Tiruvannamalai.

For Petitioner : Mr.S.Umapathy

For Respondents 1 to 4 : Mr.T.jayarama Raj
Government Advocate (CS)

ORDER

This civil revision petition is filed to set aside the fair and decreetal order dated 14.11.2017 passed in I.A.No.278 of 2017 in O.S.No.365 of 2009 on the file of District Munsif, Arni, Tiruvannamalai.

2. According to the petitioners, plaintiffs/petitioners herein have filed the suit in O.S.No.365 of 2009 before the District Munsif Court, Arni, Tiruvannamalai, seeking declaration and delivery of vacant possession. Evidence of both sides were completed and the case was posted for arguments from 25.07.2017 onwards. At this stage, the plaintiffs/petitioners herein have filed the application in I.A.No.278 of 2017 in O.S.No.365 of 2009 to amend the plaint. In the plaint, due to inadvertence, the measurement of the northern and south side of the schedule mentioned property has not been made correctly. The Advocate Commissioner submitted his report before the Court below.

3. On perusal of the report, the petitioners came to know that there is a mistake in extent of south and northern side of the schedule-B property. Therefore, they filed amendment application on making amendment in the plaint. However, the Court below has erroneously dismissed the said

application. Therefore, the petitioners have filed the present civil revision petition before this court.

4. According to the petitioners, even though the evidence was completed and the case was posted for arguments on 25.07.2017, amendment can be made in the plaint. The said mistake has occurred only due to inadvertence and by oversight, if the application is allowed, no prejudice will be caused to the 5th respondent. Therefore, the order passed by the court below is liable to be set aside.

5. The learned Government Advocate appearing for the respondents 1 to 4 would submit that the application has been filed by the petitioners belatedly.

6. The application is filed for amendment with respect to correct measurement of the suit property, by correcting the measurement as 36.2 m on the north-south side and 9.4 m on the northern side 10.6 m on the southern side, if the measurement is corrected, there is no change of cause of action or there is change of character in the suit property. By allowing application, no prejudice would be caused to the respondent. The objection raised by the learned Government Advocate appearing for the respondents 1 to 4 is only on

technical, he cannot dispute the report of the Advocate Commissioner filed before the Court below. Therefore, the order passed by the court below is liable to be set aside.

7. In view of the above, the civil revision petition is allowed. The order passed in I.A.No.278 of 2017 in O.S.No.365 of 2009 on the file of the learned District Munsif, Arni, Tiruvannamalai District, is hereby set aside. Considering the submissions made by both sides, the learned District Munsif, Arni, Tiruvannamalai is directed to dispose of the suit in O.S.No.365 of 2009 as expeditiously as possible preferably, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2017

kkd

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-speaking Order

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To

1.The District Collector,
Tiruvannamalai.

2.The Tahsildar,
Arni.

3.The Block Development Officer,
Office of B.D.O.
West Arni, Arni.

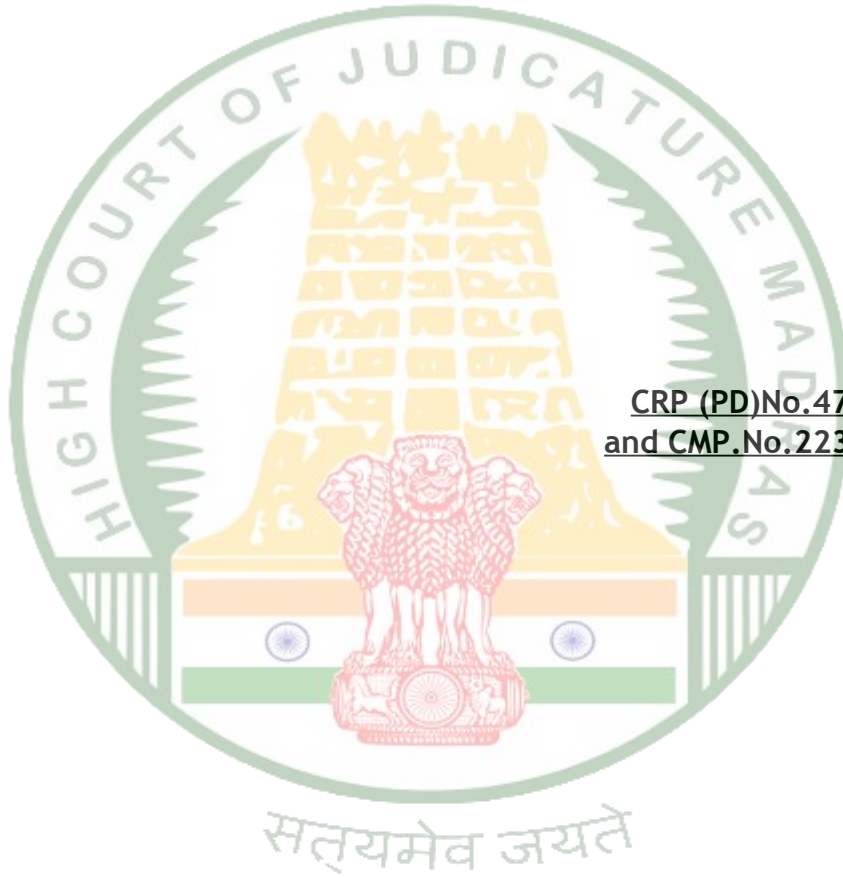
4.The Block Development Officer (Scheme)
West Arni Panchayat Union, Arni.



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D.KRISHNAKUMAR,J.

kkd



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