

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1131 of 2010
& M.P.No.1 of 2010

D.Kumar

.. Petitioner

Vs.

1.District Registrar
Registrar's office
Coimbatore.

2.Sreedhar
3.Murugan
4.Thayammal
5.Sornammal (deceased)
6.Baby Saroja
7.Savithiri
8.Usha Rani
9.K.Mohan Kumar
10.M.Hemalatha
11.M.Senthil Gayathri
12.M.Nithya

.. Respondents

(Respondents 9 to 12 brought on record
as legal heirs of the deceased 5th respondent
vide order of this Court dated 24.02.2017 by MVMJ
made in C.M.P.Nos.2485 of 2017 to
2487 of 2017 in C.R.P.No.1131 of 2010)

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decretal order dated

11.12.2009 made in I.A.No.1765 of 2007 in O.S.No.1537 of 1988 on the file of the Principal District Munsif Court, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For RR1 to 4

6 to 8 : No appearance

R5 : died

For RR9 to 12 : Batta due

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 11.12.2009 made in I.A.No.1765 of 2007 in O.S.No.1537 of 1988 on the file of the Principal District Munsif Court, Coimbatore.

2. The petitioner is the plaintiff and respondents are the defendants in O.S.No.1537 of 1988 on the file of the Principal District Munsif Court, Coimbatore. The petitioner filed suit for mandatory injunction directing the respondents 4 to 8 to produce the original deed of settlement dated 19.01.1987 executed by the respondents 4 to 8 in favour of the petitioner to the first respondent, directing the respondents 4 to 8 to produce the income

tax clearance certificate, for permanent injunction restraining the respondents 4 to 8 from alienating the suit property and for permanent injunction restraining the first respondent from entertaining for registration of any document of alienation in favour of any one else. The third respondent filed written statement on 26.02.1992 and subsequently, additional written statement was also filed by him. When the suit was included in the list of trial, the petitioner filed I.A.No.1765 of 2007 for amendment of the plaint to include the prayer for mandatory injunction directing the respondents to restore the building and restraining the respondents from altering the physical features of the suit property.

3. The third respondent/Murugan filed counter affidavit and opposed the said application on the ground that he purchased the property long back, constructed the building 20 years back and the present application for mandatory injunction is barred by limitation. He further submitted that earlier suit was dismissed for default and subsequently, restored to file. The petitioner has filed the present application only to drag on the proceedings.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application.

5. Against the order of dismissal dated 11.12.2009 made in I.A.No.1765 of 2007, the present civil revision petition is filed by the petitioner.

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

7. The learned counsel for the petitioner in support of his contention relied on the judgment of this Court reported in **1997 (II) CTC 12 (Muthammal v. Thamburati and 6 others)**, in para-17 and 18, it is held as follows:

"17. ... The decisions cited on the side of the respondents show that if the proposed amendment brings new cause of action and the same is barred by limitation, certainly the same cannot be permitted. In the light of the decisions both in favour as well as against allowing

amendment one thing is clear that the general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred. As pointed out by the Supreme Court in *A.K.Gupta and Sons v. Damodar Valley Corporation*, AIR 1967 SC 96, where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts, the amendment is to be allowed even after expiry of the statutory period of limitation. . . .

18. . . . it is well settled that the Court may in appropriate cases allow the amendment even after the statutory period of limitation. By allowing the amendment, no injury or injustice is caused to the respondent herein. No jurisdictional error is also involved in this case because of the amendment being ordered. The amendment application should have been allowed, since it is not going to change the nature of the plea nor does it affect the rights of the defendants. The defendants are entitled to put-forward all their contentions even if the amendment is allowed. As already observed by the Apex Court, I am of the

view that the object of Courts and rules of procedures is to decide the rights of the parties in toto and not to punish them their mistake. . . . ”

8. From the materials on record, it is seen that on earlier occasion, the suit was dismissed for default on 03.09.2003 and subsequently, it was restored to file on 28.02.2007. When the suit was included for trial, the petitioner has come out with the present application. The petitioner has not given any details as to when the respondents have demolished the suit property pending suit. On the other hand, the third respondent stated that he demolished the building 20 years back, after he purchased the suit property.

9. From the facts as stated above, it is clear that the intention of the petitioner is only to drag on the proceedings. The judgment relied on the petitioner is not applicable to the facts of the present case. The learned Judge has considered all the above facts in proper perspective and rightly dismissed the application. There is no irregularity or illegality in the order passed by the learned Judge dated 11.12.2009 warranting interference by this Court.

10. In the result, the Civil Revision Petition is dismissed. As the suit is of the year 1988, the learned District Munsif, Coimbatore, is directed to dispose the suit in O.S.No.1537 of 1988 as expeditiously as possible in any event, not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

12.07.2017

Index : Yes/No

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To

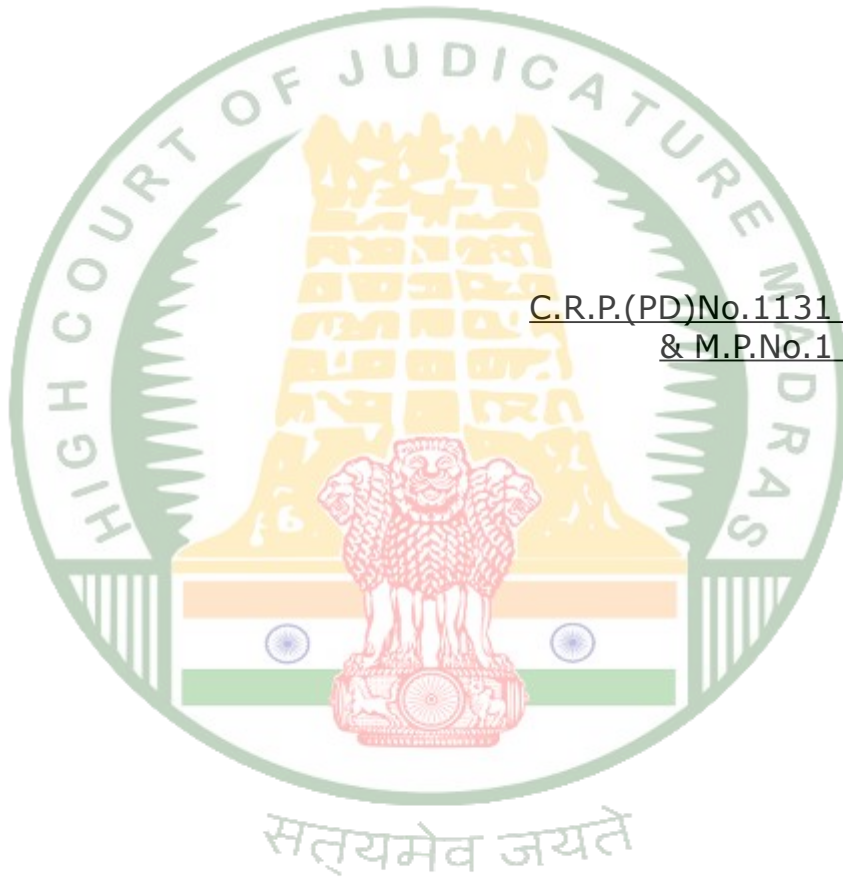
The District Munsif, Coimbatore.

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V.M.VELUMANI, J.

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