

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.2952 & 2958 of 2011
& M.P.No.1 of 2011

1. Kaliyaperumal
s/o.Lakshmanan

2. Paramasivam

.. Petitioners in
both the CRPs

Vs.

1. The Village Administrative Officer
Manigramam Village
Sirkali Taluk
Nagapattinam District.

2. The Revenue Inspector
Thiruvengadu
Sirkali Taluk
Nagapattinam District.

3. The Tahsildar
Office of Tahsildar
Thenpathi
Sirkali Town.

4. The State of Tamilnadu
Rep. by its District Collector
Nagapattinam District
Nagapattinam

5. Kaliyaperumal
s/o.Ponnuswamy

.. Respondents in
both the CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 25.04.2011 made in I.A.Nos.358 & 359 of 2011 in O.S.No.83 of 2007 on the file of the District Munsif Court, Sirkali.

For Petitioners : Mr.A.Muthukumar

For RR1 to 4 : Mr.Venugopal
Special Government Pleader

For R5 : Mr.S.Sounthar

COMMON ORDER

The Civil Revision Petitions have been filed against the fair and decretal order dated 25.04.2011 made in I.A.Nos.358 & 359 of 2011 in O.S.No.83 of 2007 on the file of the District Munsif Court, Sirkali.

2. The issues in both the civil revision petitions are one and the same and therefore, they are disposed of by this common order.

3. The petitioners are the plaintiffs and the respondents are the defendants in O.S.No.83 of 2007. The petitioners filed O.S.No.83 of 2007 for permanent injunction restraining the respondents 1 to 4 from interfering with the petitioners' peaceful

possession and enjoyment of the property in R.S.No.313/2. Subsequently, the fifth respondent was impleaded as fifth defendant in the suit. The respondents 1 to 4 and fifth respondent filed written statements and are contesting the suit. Trial commenced. Both the petitioners and respondents let in evidence and closed their side. When the suit was posted for arguments, the petitioners filed two applications in I.A.No.358 of 2011 to reopen the case and I.A.No.359 of 2011 for amendment.

4. According to the petitioners, they are illiterate persons and at the time of giving instructions, by mistake, they gave S.No.313/2 instead of S.No.313/1. Only from the evidence let in by the parties, the petitioners came to know that the correct survey number of the suit property is 313/1. In the circumstances, amendment is necessary to decide the issue. The application in I.A.No.358 of 2011 to reopen the case is necessary to file application for amendment.

5. The respondents 1 to 4 filed counter affidavit denying the averments made in the said applications submitted that after conclusion of evidence, if the amendment is ordered, the entire cause of action will change and hence, application for amendment is

devoid of merits. Similarly, the application for reopen the case cannot be ordered for the purpose of application for amendment, when the suit is posted for arguments.

6. The fifth respondent filed separate counter affidavit and submitted that the pathway is on the southern side of the Government Godown, which is in R.S.No.313/1 and the petitioners have wrongly given the survey numbers and boundaries. In the written statement filed by the fifth respondent on 14.12.2009 itself, fifth respondent has stated that the petitioners have given wrong survey numbers and boundaries. The pathway in S.No.313/1 leads to paddy field of the fifth respondent. On many occasions, the petitioners have blocked the same and fifth respondent has given complaint to the respondents 1 to 4 against the petitioner. In the present case, the evidence has been completed and the suit is posted for arguments. At this stage, if the amendment is allowed, the entire nature of the suit would change. In the judgment reported in **2008 (8) MLJ 307**, the Hon'ble Apex Court held that the amendment at the stage of arguments is not maintainable.

7. The learned Judge, considering the averments made in the affidavit, counter affidavit, materials on record and judgments relied

on by the counsel for the fifth respondent, dismissed both the applications.

8. Against the order of dismissal dated 25.04.2011 made in I.A.Nos.358 & 359 of 2011, the present two civil revision petitions have been filed by the petitioners.

9. Heard both the learned counsel for the petitioners and respondents and perused the materials on record.

10. Learned counsel for the petitioners in support of his contention, has relied on the judgment reported in **(2009) 2 SCC 409 (Vidyabai and others v. Padmalatha and another)**, wherein paragraphs-10 and 19 are extracted hereunder:

"7. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under:

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in

spite of due diligence, the party could not have raised the matter before the commencement of trial."

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

.....

19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional

fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the

amendment of the plaint.”

11. From the materials on record, it is seen that the petitioners have filed the suit for permanent injunction restraining the respondents from interfering with the petitioners' peaceful possession and enjoyment of the suit property in S.No.313/2. The respondents 1 to 4 filed written statement before 14.12.2009 and fifth respondent filed written statement on 14.12.2009 stating that the respondents have stated that the petitioners have given wrong survey numbers and boundaries. In spite of the same, the petitioners have not verified the records, but filed applications to reopen and for amendment of the survey numbers given in the plaint. Now by amending the survey numbers, the nature of the property will be changed, which will amount to change the character of the suit and the respondents will be prejudiced as evidence has been let in by the parties in respect of the survey No.313/2 as mentioned in the plaint. The petitioners have not given any reason for filing the applications at the fag end of the trial and for non filing of the applications. The petitioners have also not mentioned that in spite of due diligence, they could not have filed application for amendment before commencement of trial. In view of the above

facts, both the civil revision petitions are dismissed as devoid of merits.

12. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected civil miscellaneous petition is also closed.

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Index : Yes/No
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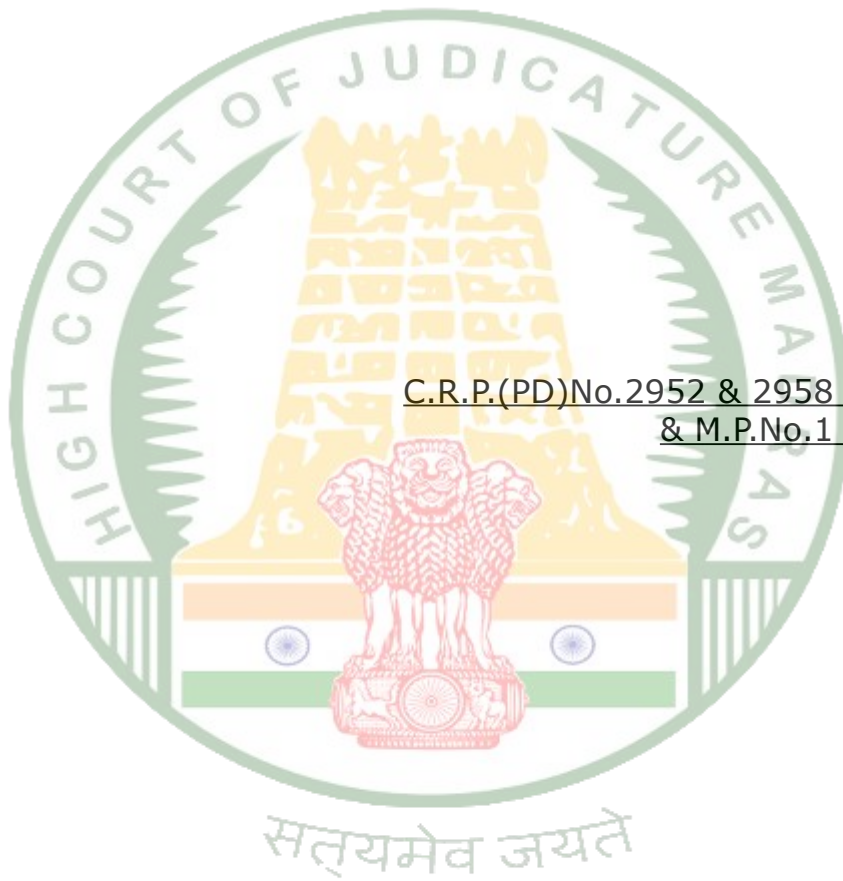
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V.M.VELUMANI, J.

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