

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3337 of 2011
& M.P.No.1 of 2011

Rose Mary (Deceased)
rep.by her Legal Heir
1. Anthonisamy @ Anthonidass

Zhandark (Deceased)
rep.by his Legal Heirs
2. Ethiyam Gnana Arokiyam
3. Achan @ Mariegriette
4. Kulandaisamy Dok
5. Flora Cathrina
6. Sebastian

... Petitioners

Vs.

1. Anthonidass @ Raja
2. Susairaj

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 26.07.2011 passed in I.A.No.19 of 2011 in A.S.No.1 of 2011 on the file of the Court of District Judge, Karaikal.

For Petitioners : Mr.Saikrishnan
for M/s.Sai Bharath & Ilan

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order dated 26.07.2011 passed in I.A.No.19 of 2011 in A.S.No.1 of 2011 on the file of the Court of District Judge, Karaikal.

2. The petitioners are defendants in O.S.No.108 of 2004 and the respondents 1 & 2 are plaintiffs who filed suit for recovery of possession, after removing the superstructure put up and for mense profit. The petitioners filed written statement in the year 2004 stating that the description of the property is not correct. After contest, by the judgment and decree dated 21.9.2010, the suit was dismissed on the ground that the suit property was not properly described. Against the judgment and decree dated 21.09.2010, the respondents filed appeal. In the appeal, the respondents 1 and 2 filed I.A. No.19/2011 under Order 6 Rule 17 of C.P.C for amending the plaint and appeal with regard to description of property. The petitioners opposed the said application. The learned Judge allowed the application on the ground that the said amendment is necessary to decide the issue and the said amendment will not introduce any new case or new cause of action or change in the character of the subject matter of the suit.

3. Against the said order dated 26.07.2011 passed in I.A.No.19 of 2011 in A.S.No.1 of 2011, this Civil Revision Petition has been filed.

4. The learned counsel for the petitioners submitted that the trial Court has elaborately considered the contentions of the parties with regard to the description of A and C Schedule property holding that the description of the property is not correct. In the appeal filed against the said judgment and decree, the respondents filed an application to amend the description of the property. By such amendment, the respondents are introducing a new A, B and C schedule property. The learned Judge failed to consider that by amendment, the respondents are introducing new A, B and C schedule property which completely changes the nature and character of the suit. The petitioners filed written statement in the year 2004 itself and pointed out the wrong description of the property. The Advocate Commissioner also filed report with sketch informing about the wrong description of the property. In spite of the same, respondents did not file any application to amend the schedule of the plaint, at the earliest in the Trial Court. The learned Judge, without giving any reason, by non-speaking order, allowed

the application and hence prayed for allowing the Civil Revision Petition.

5. Mrs.Srividhya, representing Mr.A.Muthukumar, learned counsel for the respondents submitted that the counsel on record handed over the bundle to the respondents on 07.09.2015 and they are not appearing for the respondents.

6. From the records, it is seen that the respondents have not filed any change of vakalat. In the said circumstances, this Civil Revision Petition is decided on merits.

7. Heard the learned counsel appearing for the petitioners and perused the materials available on record.

8. From the materials on record, it is seen that the petitioners have pointed out in the written statement filed by them in the year 2004, that the description of the property is not correct. The Advocate Commissioner appointed in the suit inspected the suit property and filed his report with sketch stating that there is difference in the property described in Schedule A, B & C. The suit was dismissed for wrong description of the property. A reading of

the application filed by the respondents in the appeal shows that the respondents are introducing entirely a new property in Schedule A, B & C. This introduces a new case. The finding of the learned Judge that amendment does not introduce any new case and cause of action is erroneous as he failed to appreciate the materials on record in proper perspective manner. The learned Judge committed irregularity by not giving a proper and valid reason for allowing the application.

9. In the result, this Civil Revision Petition is allowed setting aside the order dated 26.07.2011 passed in I.A.No.19 of 2011 in A.S.No.1 of 2011. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

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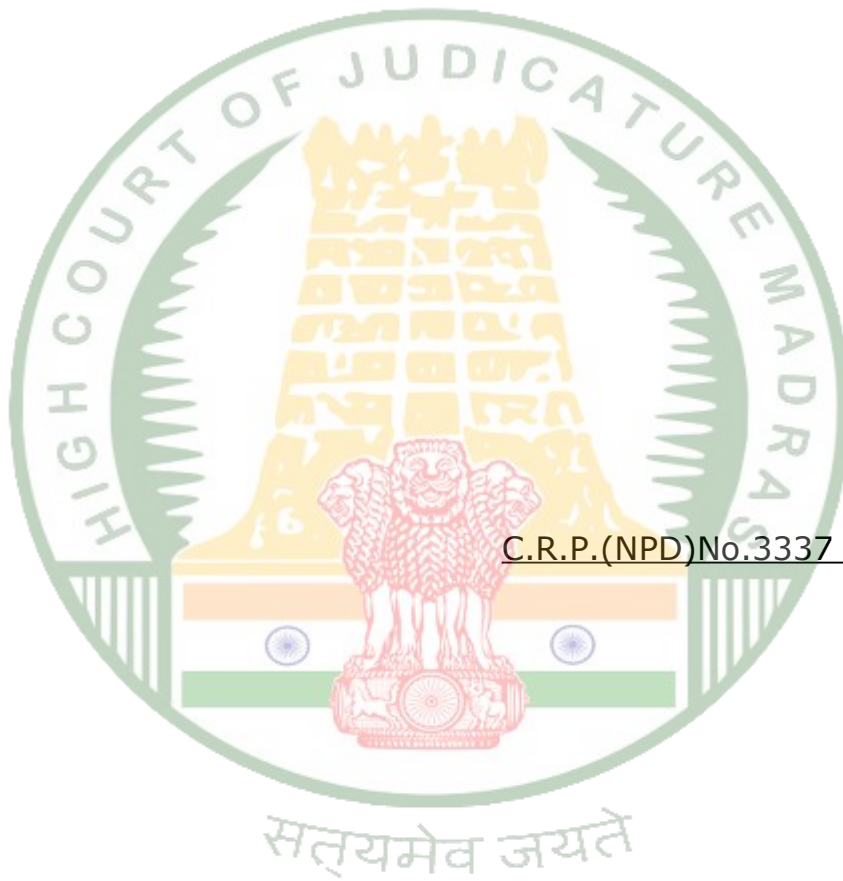
To

The District Judge,
Karaikal.

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V.M.VELUMANI, J.

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