

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.4916 of 2014
and M.P.No.1 of 2014

Punitha

... Petitioner

Vs.

1.Sekar

2.Durga

3.Minor Tulasiraman

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 28.10.2014 made in I.A.No.121 of 2014 in O.S.No.55 of 2011 on the file of the District Munsif Court, Ranipet.

For Petitioner : Mr.A.Gouthaman

For Respondents : Mr.P.Srinivasan

ORDER

This Civil Revision Petition has been filed to set aside the order and decree dated 28.10.2014 made in I.A.No.121 of 2014 in O.S.No.55 of 2011 on the file of the District Munsif Court, Ranipet.

2. The petitioner is the plaintiff and respondents are the defendants in the suit in O.S.No.55 of 2011. The petitioner filed the suit for declaration and for recovery of possession. The respondents 1 and 2 filed written statement and are contesting the suit. The trial commenced. The petitioner was examined as P.W.1 and was cross-examined. The respondent was examined as D.W.1. The petitioner also cross-examined D.W.1 partly, and when the suit was posted for further cross-examination of D.W.1, the petitioner filed an application in I.A.No.121 of 2014 for amendment of plaint, so as to include the vacant site adjoining the house property mentioned in the suit.

3. The grievance of the petitioner is that she is an illiterate and she does not have the knowledge of English language, and more so, her previous counsel also had not mentioned about the vacant site in the original suit filed, which she is entitled to. This fact was known to her only when her present counsel informed her and hence, she contends that amendment of plaint is necessary to adjudicate the matter properly.

4. The respondents filed counter affidavit and opposed the

said application. It is contended by the respondents that after commencement of trial, amendment of plaint cannot be entertained, and hence prayed for dismissal of the application in I.A.No.121 of 2014.

5. The learned Judge considering the affidavit and counter affidavit dismissed the application in I.A.No.121 of 2014, vide order dated 28.10.2014, holding that the petitioner is seeking to introduce a new cause of action and new case.

6. Against the said order of dismissal in I.A.No.121 of 2014, the petitioner has filed the present Civil Revision Petition.

7. The learned counsel for the petitioner submitted that by amendment, the petitioner is seeking to include the vacant site which was left out by oversight. The amendment does not introduce new cause of action or new case. The learned counsel for the petitioner in support of his contention has relied on the judgment of Hon'ble Supreme Court in ***Mahila Ramkali Devi and Others Vs. Nandram (Dead) through Legal Representatives and Others*** reported in [2015 (13) SCC 132] and submitted that a party cannot be refused to grant relief just because some mistake

has been committed by inadvertence. He also placed reliance on the judgments of this Court in CRP (PD) No.3015 of 2011 [*E.K.Palanisamy Vs. Manonmani and Others*] reported in [2014 (3) MWN (Civil) 806], and submitted that though amendment cannot be claimed as a matter of right, the Courts while deciding the application should not adopt hyper-technical approach and in CRP (PD) No.3291 of 2015 [*Kaleeswaran Vs. Uma*] reported in [2015 5 LW 761], and submitted that amendment to correct the survey numbers, boundaries etc., would not alter the case.

8. The learned counsel for the respondent submitted that the petitioner sought for relief only with regard to building, and now by amendment, she is seeking to introduce a new case with regard to land also.

9. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on records.

10. From the materials available on record, it is seen that the petitioner has sought for the relief as claimed in the suit is only on the ground that the respondents are preventing her from

converting the thatched roof into a tiled roof house. The petitioner has not stated anything about the interference of the respondents in respect of the vacant site. In view of the same, the petitioner is seeking to amend the plaint to include the open space and the vacant site, which amounts to introducing a new case and new cause of action. The learned Judge has rightly considered the averments made by both sides, and dismissed the application by giving valid and cogent reasons. It is also relevant to state that the judgments relied by the learned counsel for the petitioner are not applicable to the present case of the petitioner. There is no infirmity or illegality in the order dated 19.06.2017 passed by the learned District Munsif in I.A.No.121 of 2014 in O.S.No.55 of 2011.

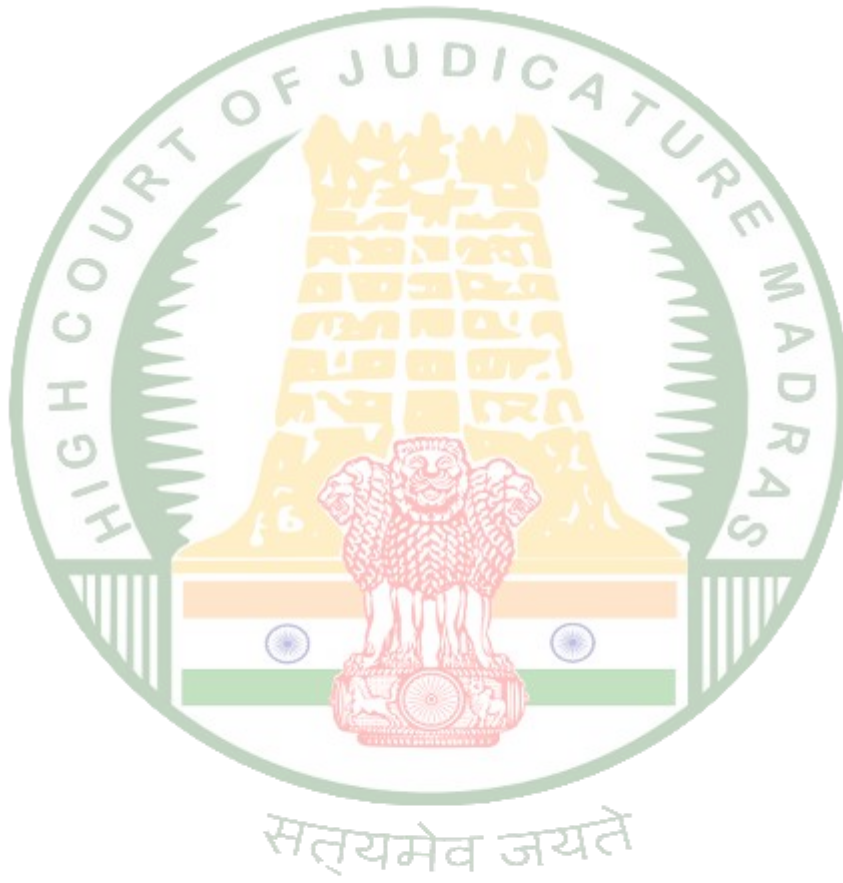
11. In the result, the civil revision petition is dismissed. However, the learned trial Judge is directed to dispose of the suit as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2017

ds

Speaking order/Non-speaking order

Internet : Yes / No
Index : Yes / No

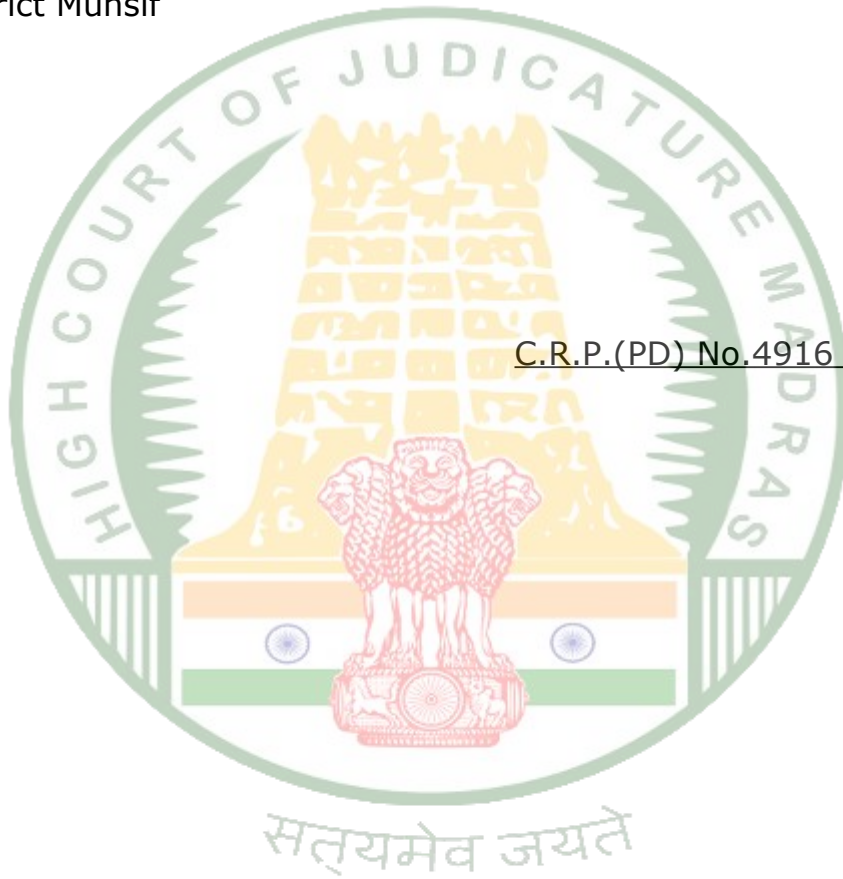


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V.M.VELUMANI, J

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To:
The District Munsif
Ranipet.



C.R.P.(PD) No.4916 of 2014

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