

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2017

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3534 of 2008

Subbathal

... Petitioner

Vs.

1.Marappa gounder
2.Ramaswami

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 C.P.C, against the fair and decreetal order dated 20.11.2007 made in I.A.No.756 of 2006 in O.S.No.2050 of 1996 on the file of the I Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.S.Gunalan
for Ms.P.Indumathi

For R1 : No appearance

R2 : Died

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 20.11.2007 made in I.A.No.756 of 2006 in O.S.No.2050 of 1996 on the file of the I Additional District Munsif Court, Coimbatore.

2. The petitioner is the plaintiff and respondents are the

defendants in O.S.No.2050 of 1996. The petitioner filed suit for partition of the suit property. In the suit, exparte preliminary decree was passed on 17.12.1991. In the final decree proceedings, Advocate Commissioner was appointed and he inspected the property and at that stage, the petitioner came to know that survey number of the suit property is given wrongly as 680 instead of 678. In the final decree application, Advocate Commissioner filed a report and plan stating that the property is in S.No.678 only. An exparte final decree was passed on 22.11.2005. The petitioner has got share only in S.No.678 and not in S.No.680. By mistake and clerical error, survey number has been mentioned as 680 instead of 678. Therefore, the petitioner filed I.A.No.756 of 2006 to amend the plaint, preliminary decree and final decree applications.

3. The respondents filed counter affidavit and opposed the said application and submitted that the respondents have taken steps to file applications to set aside the exparte preliminary decree and final decree. According to the respondents, the petitioner knew about the survey number in the year 2004 itself that she has share only in S.No.678 and not in S.No.680. But she has not taken any steps to correct the error. Having allowed to pass final decree in respect of S.No.680, she is not entitled to correct the error now.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application holding that amendment sought for by the petitioner is not a clerical error and if amendment is allowed, it will change the entire character of the suit.

5. Against the said order of dismissal dated 20.11.2007 made in I.A.No.756 of 2006, the petitioner has come out with the present Civil Revision Petition.

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

7. The contentions of the learned counsel for the petitioner that by mistake and clerical error, S.No.680 is mentioned in the schedule to the plaint and correct survey number is only 678 and the Advocate Commissioner inspected the property only in S.No.678 and filed his report with regard to S.No.678 only, are not tenable. The petitioner sought for partition in respect of S.No.680, based on the averments made in the plaint, preliminary decree and final decree have been passed in respect of S.No.680. When the petitioner sought for partition in respect of S.No.680 and obtained preliminary decree and final decree, application for amendment of survey number is not

maintainable, as the same is introducing a new cause of action, which will change the entire character of the suit.

8. The learned Judge considering all the above aspects in proper perspective, dismissed the application by giving cogent and valid reasons. There is no irregularity or illegality in the order of the learned Judge dated 20.11.2007 warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs.

04.10.2017

Index: Yes/No

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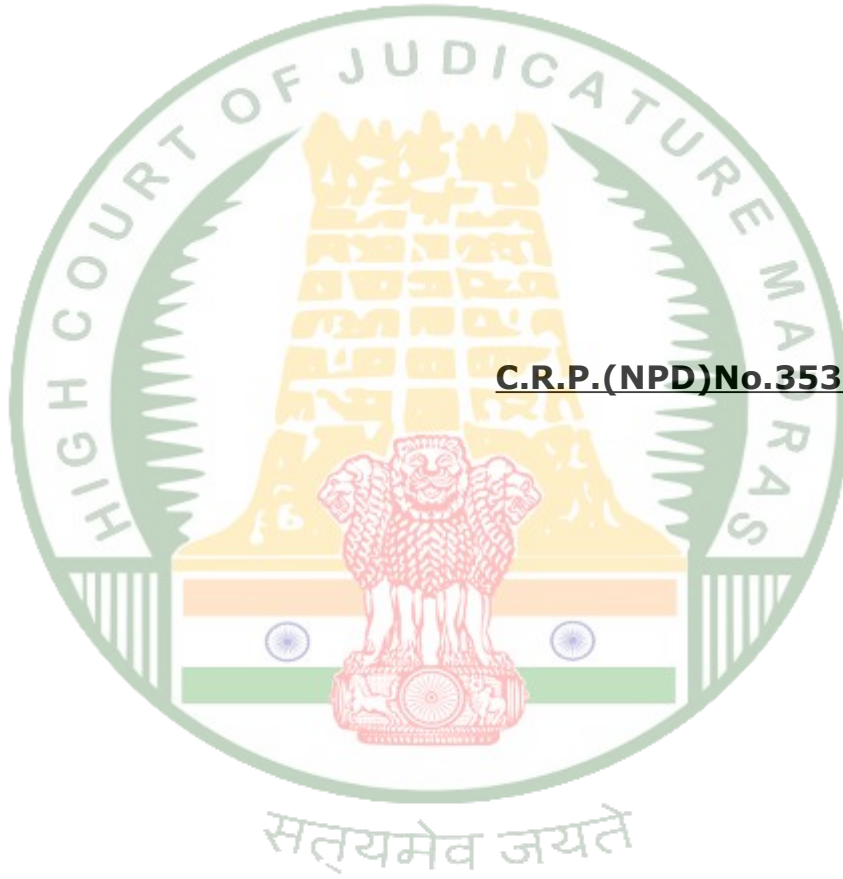
To

I Additional District Munsif Court, Coimbatore.

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V.M.VELUMANI,J.

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