

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3607 of 2012
& M.P.No.1 of 2012

K.R.Chandrasekar

.. Petitioner

Vs.

1.M.Thangammal

2.K.R.Gnanasundaram

3.K.C.Amirthalingam(deceased)

4.K.C.Balakrishnan

5.Prabu @ Vivek

6.Deepan

7.Paramasivam

8.K.S.Palanisamy

9.V.Ramasamy Chettiyar

10.Gomathy

11.K.A.Ravindran

12.K.A.Kumara Vadivel

.. Respondents

(Respondents 10 to 12 brought on record
as legal heirs of deceased third respondent
vide order of Court dated 13.09.2017 made
in C.M.P.Nos.8373 to 8375 of 2017 in
C.R.P.(PD)No.3607 of 2012)

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

06.09.2012 made in I.A.No.266 of 2012 in O.S.No.26 of 2009 on the file of the II Additional Subordinate Court, Erode.

For Petitioner : Mr.M.Guruprasad

For R1,R4 to R6 & R9 : Mr.K.S.Jeyaganeshan

For R2,R3,R7 & R8 : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 16.06.2012 made in I.A.No.266 of 2012 in O.S.No.26 of 2009 on the file of the II Additional Subordinate Court, Erode.

2. The petitioner is the plaintiff and respondents 1 to 9 are the defendants in O.S.No.26 of 2009 on the file of the Subordinate Court, Erode. The petitioner filed the said suit for recovery of possession of the B schedule property and permanent injunction restraining the respondents from alienating or encumbering any portion of the B schedule property and from trespassing into the portions in the possession of the petitioner in A and B schedule properties.

3. The petitioner filed I.A.No.685 of 2011 for amendment of the plaint to include one more property. According to the petitioner,

the said property was not included in the plaint by oversight. The petitioner has mentioned in the affidavit for amendment filed in I.A.No.685 of 2011, to include the said property in A schedule property as Item No.4. By mistake, in that application, he has mentioned that the property to be included as Item No.8 in the B schedule property. I.A.No.685 of 2011 was allowed and amendment was carried out by including said property as Item No.8 in B schedule property. Subsequently, the petitioner came to know that the property included as Item No.8 in B schedule property is in his possession and it should be mentioned as Item No.4 in A schedule property. In the circumstances, he has filed I.A.No.266 of 2012 for amendment of the plaint to delete Item No.8 in the B schedule property and include the same as Item No.4 in the A schedule Property.

4. The respondents filed counter affidavit and opposed the said application. They also denied various averments made in the affidavit. According to the respondents, the present application has been filed, after commencement of trial and hence, it is not maintainable. The petitioner has not stated as to which property is

in his possession and which is not in his possession and hence, prayed for dismissal of the application in I.A.No.266 of 2012.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the petitioner has filed an application after recording evidence of P.W.1 with regard to possession of the B schedule property.

6. Against the said order of dismissal dated 06.09.2012 made in I.A.No.266 of 2012 , the present Civil Revision Petition is filed by the petitioner/plaintiff.

7. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents 1,4 to 6 and 9 and perused the materials available on record.

8. In support of his contention, the learned counsel for the petitioner has relied on the following judgment of this Court reported in **2017-4-L.W.382 (M.Kulasekaran & another Vs. M.Dhanapathy & others);**

"6. The learned counsel appearing for the petitioners reiterated the averments and relied upon the judgment reported in 2012-1-L.W.910 = 2012(2)CTC 94(J.Samuel and others vs. Gattu Mahesh and others), wherein para nos.12 to 14, it has been held as follows:-

12) The primary aim of the Court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the Court so that the Court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their complaints. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states 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.

13) Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

14) A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit. "

9. From the materials available on record, it is seen that the petitioner filed I.A.No.685 of 2011 for amendment to include one more property. The said application was allowed and the said property included as Item No.8 in B schedule property. According to the petitioner, the said property is in his possession and by mistake, the said property was included as Item No.8 in B schedule property instead of Item No.4 in A schedule property. The petitioner has filed the suit for recovery of possession mentioned in B schedule property. According to the petitioner, he came to know that the property mentioned as Item No.8 in B schedule property is in his possession and the same has to be included as Item No.4 in A schedule property. The said application was dismissed by the learned Judge on the ground that the petitioner has filed the application after commencement of trial and evidence of P.W.1.

10. As per Order VI Rule 17 of C.P.C., amendment can be ordered at any stage of the suit. The discretion of the Court in allowing the application after commencement of trial is that if the person seeking amendment must satisfy the Court that in spite of due diligence, he could not file application before the commencement of trial.

11. There is no total bar in ordering amendment after commencement of trial. In the present case, earlier amendment was ordered and the property was included in the plaint as Item No.8 in B schedule property. Now the petitioner is seeking amendment to include the said property as Item No.4 in A schedule property. Such amendment will not change the character of the suit and it is not introducing any new case and new cause of action. The respondents will not be prejudiced, if such amendment is ordered. For the above reason, the impugned order of the learned Judge dated 06.09.2012 made in I.A.No.266 of 2012 is set aside.

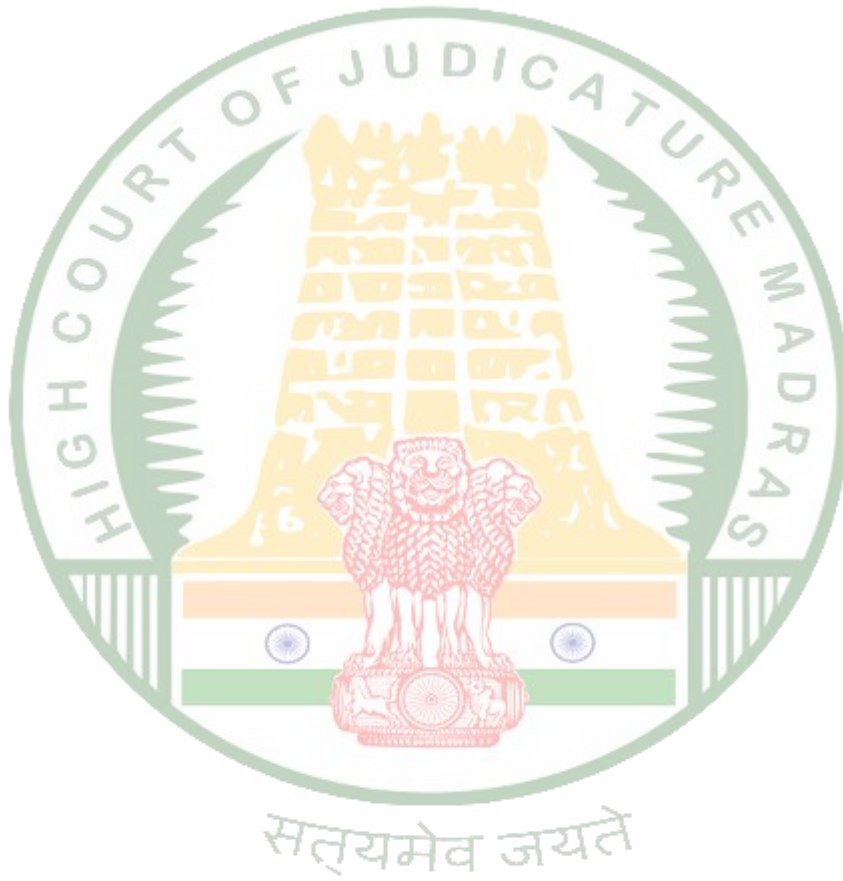
12. In the result, the Civil Revision Petition is allowed by setting aside the order dated 06.09.2012 made in I.A.No.266 of 2012. As the suit is of the year 2012, the learned II Additional Subordinate Judge, Erode, is directed to dispose the suit as expeditiously as possible, in any event not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

06.10.2017

Index : Yes/No
dm/kj

To

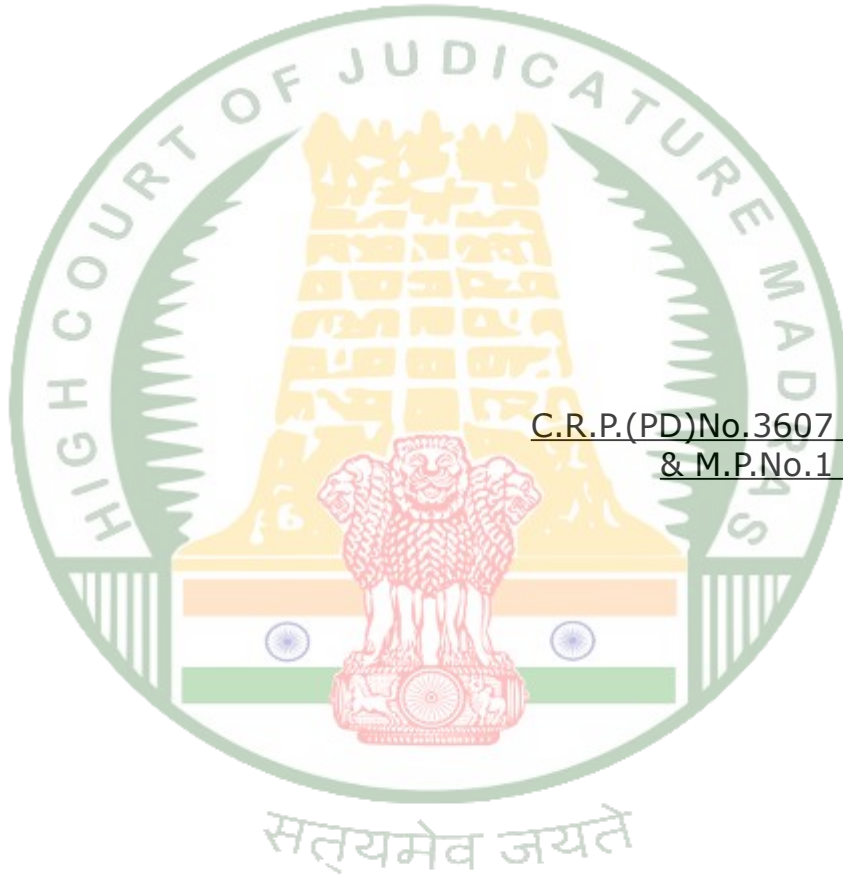
The II Additional Subordinate Judge,
Erode.



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V.M.VELUMANI,J.

Kj/dm



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