

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3671 of 2012
and
M.P.No.1 of 2012**

Ganesan

.. Petitioner

Vs

1.The District Collector,
Salem District,
Salem.

2.The Tahsildar,
Attur Taluk,
Salem District.

3.The Conservator of Forest Officer,
Attur,
Salem District.

4.The District Forest Officer,
Attur,
Salem District.

5.The Forest Range Officer,
Attur,
Salem District.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decreetal orders in
I.A.No.134 of 2011 in O.S.No.37 of 2002 dated 06.09.2011, on the file

of District Munsif, Attur, Salem District.

For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.N.Inbanathan (for R3, R4 & R5)
Government Advocate

No Appearance (for R1 & R2)

ORDER

The Revision Petitioner herein by way of this Civil Revision Petition seeks to set aside the Fair and Decreeal order dated 06.09.2011 made in I.A.No.134 of 2011 in O.S.No.37 of 2002 by the Learned District Munsif, Aattur.

2.The revision petitioner herein is the plaintiff has filed the above suit for the relief of Declaration and consequential Permanent Injunction against the respondent/defendant in respect of the suit schedule property.

3.According to the revision petitioner/plaintiff the suit property previously owned by the respondent was under long possession and enjoyment for more than 60 years and hence pleading adverse possession the above suit is laid against the respondent.

4.The trial commenced and witnesses remained examined. In

the said circumstances, the revision petitioner filed the above interlocutory application in I.A.No.134 of 2011 under Order 6, Rule 17 of CPC seeking for amendment of his plaint by stating the four boundaries of the suit property. The said application came to be dismissed by the Learned Trial Judge holding that the application is made belatedly and the amendment sought being a post trial amendment, it is liable to be disallowed. The said order of dismissal of revision petitioner's application to amend the plaint is under challenge in this revision.

5.I heard the arguments of Mr.S.Kamadevan, learned counsel appearing for the petitioner and Mr.N.Inbanathan, learned Government Advocate for the respondents 3 to 5. There is no representation on behalf of the respondents 1 and 2. I have also perused the entire records.

6.On perusal of the impugned order and available record it is seen that the suit property as stated in the plaint is not denoted with its boundaries. No doubt that in a suit for Declaration, indication of four bounties is indispensable for appropriate conclusion and to decide the suit.

7.However, it is the case of the revision petitioner that he is a Malayalee and he is an illiterate having no knowledge to read or write.

8.It is his case that the failure to mention the four boundaries is neither willful nor wanton but an omission acquired due to illiteracy of the petitioner that he failed to note that in the plaint the four boundaries are not mentioned.

9.It is needless to say that in as much as a post trial amendment, the Court has to see as to whether the nature of the suit changes or the amendment will prejudice the defendants and that whether there is any withdrawal of admission by way of amendment.

10.In the case on hand inclusion of four boundaries in my considered opinion will not be hit by any of the above reason stated in the preceding paragraph. There will also be no change in nature of the suit, if the amendment is allowed and in actual it will enable the trial Court to come to a proper decision.

11. In view of the forgoing reasons, the impugned order is liable to be set aside by allowing revision petitioner's application filed under Order 6, Rule 17 of CPC to amend the plaint by including the description of four boundaries.

12. In the result, this civil revision petition is allowed and the Fair and Decretal order dated 06.09.2011 made in I.A.No.134 of 2011 by the Learned District Munsif, Aattur in O.S.No.37 of 2002 stands set aside. No costs. Consequently, connected miscellaneous petition is closed.

02.03.2017

vs

Note: Issue order copy on 01.02.2019

Index: Yes

Internet: Yes

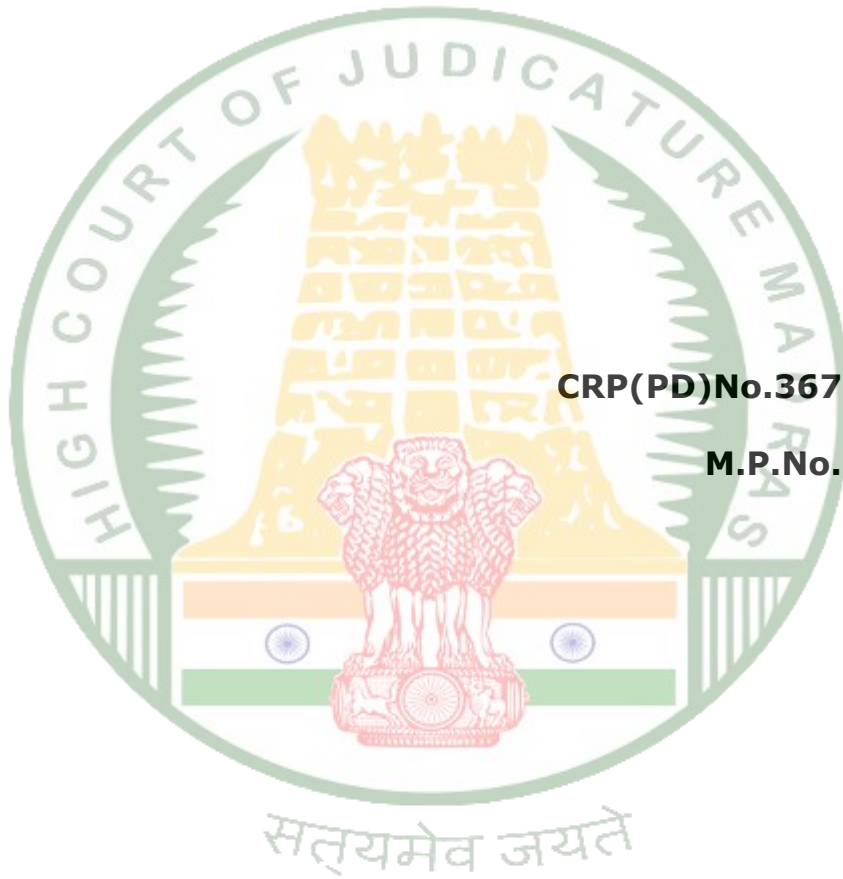
To

The District Munsif, Attur, Salem District.

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M.V.MURALIDARAN,J.

VS



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