

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4434 of 2012
& M.P.No.1 of 2012

1.Subramaniam
2.Saraswathi
3.Palaniammal

.. Petitioners

Vs.

1.G.M.Muthusamy (Deceased)
2.Gurusamy
3.Manoharan
4.Sathyamoorthy
5.Jawahar

.. Respondents

RR3 to 5 brought on records as
LRs of deceased 1st respondent's
vide order of Court dated 10.04.2017,
by Dr.PDSJ, made in CRP(PD).4434/2012

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.08.2012, made in I.A.No.273 of 2012 in O.S.No.46 of 2011 on the file of the II Additional District Munsif Court, Erode.

For Petitioners	: Mr.M.Guruprasad
For R1	: Died
For R2	: No appearance
For R3 to R5	: Not ready in notice

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 10.08.2012, made in I.A.No.273 of 2012 in O.S.No.46 of 2011 on the file of the II Additional District Munsif Court, Erode.

2. The petitioners are defendants 2, 4 and 5, the deceased first respondent is the plaintiff and second respondent is the third defendant in O.S.No.46 of 2011 on the file of the II Additional District Munsif Court, Erode. The respondents 3 to 5 are the legal heirs of the first respondent/plaintiff. The first respondent filed the said suit for partition and separate possession. The defendants 3, 4 and 5 filed written statement on 03.01.2011 and are contesting the suit. Trial commenced. PW1 was examined in chief. When the suit was posted for cross examination of PW1, the deceased first respondent filed an application in I.A.No.273 of 2012 for amendment to include the relief of declaration that settlement deed dated 11.07.2008 executed by the first defendant in favour of the first petitioner herein is null and void. According to the first

respondent, to decide the suit for partition, the said declaration is necessary.

3. The petitioners filed counter affidavit and denied all the averments and submitted that the first respondent was aware of the settlement deed dated 11.07.2008 and the fact that the properties settled on the first petitioner was sold as house sites. The first respondent has not given any reason for not filing the application for amendment in time and application is filed only after commencement of trial.

4. The learned Judge, considering the averments in the affidavit, counter affidavit and averments in the plaint, allowed the application, holding that the first respondent has made necessary averments in the plaint with regard to the settlement deed and if amendment is allowed, it will not introduce any new case or new cause of action.

5. Against the said order dated 10.08.2012, made in I.A.No.273 of 2012 in O.S.No.46 of 2011, the present civil revision petition is filed by the petitioners.

6. Heard the learned counsel appearing for the petitioners. Though notice was served on the second respondent and his name is printed in the cause list, there is no representation either in person or through counsel. The first respondent entered appearance through counsel. His legal heirs are impleaded as respondents 3 to 5.

7. The learned counsel appearing for the petitioner reiterated the averments in the counter affidavit and grounds of revision and further submitted that the power conferred on the Court for amendment after commencement of trial is very limited discretionary power and the learned Judge has exercised such power in a casual manner. The first respondent filed the suit for partition and separate possession. After commencement of trial, the first respondent has filed the present application for amendment to include the relief of declaration to declare the settlement deed as null and void. The said application is a belated one and the first respondent has not given any reason for not filing the application earlier and the relief sought for by the first respondent is barred by limitation.

8. The learned Judge, considering the nature of the suit and averments made in the plaint, allowed the application. It is well settled that the amendment can be ordered at any stage when the amendment is necessary to decide the issue in the suit in entirety and the same can be allowed. Such application can be allowed in equity and interest of justice. At the same time, the Court has to take into consideration that such amendment does not prejudice other party and takes away accrued interest of other party. In the present case, from the impugned order of the learned Judge, it is seen that the first respondent has made averments in the plaint, with regard to the settlement deed dated 11.07.2008, executed by the first defendant in favour of the first petitioner. The first respondent sought for an amendment to include the relief of declaration to declare the settlement deed as null and void and consequent amendment for payment of Court Fee portion. He is not seeking any amendment for introducing the new facts. The contention of the petitioner that the relief sought for by the first respondent is barred by limitation can be decided at the conclusion of trial by appreciating the evidence let in by the parties.

9. The learned Judge has exercised his discretionary power

judicially and has given cogent and valid reason for dismissing the application. Therefore, there is no illegality or irregularity warranting

V.M.VELUMANI, J.

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interference by this Court with the order of the learned trial Judge dated 10.08.2012.

10. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2017

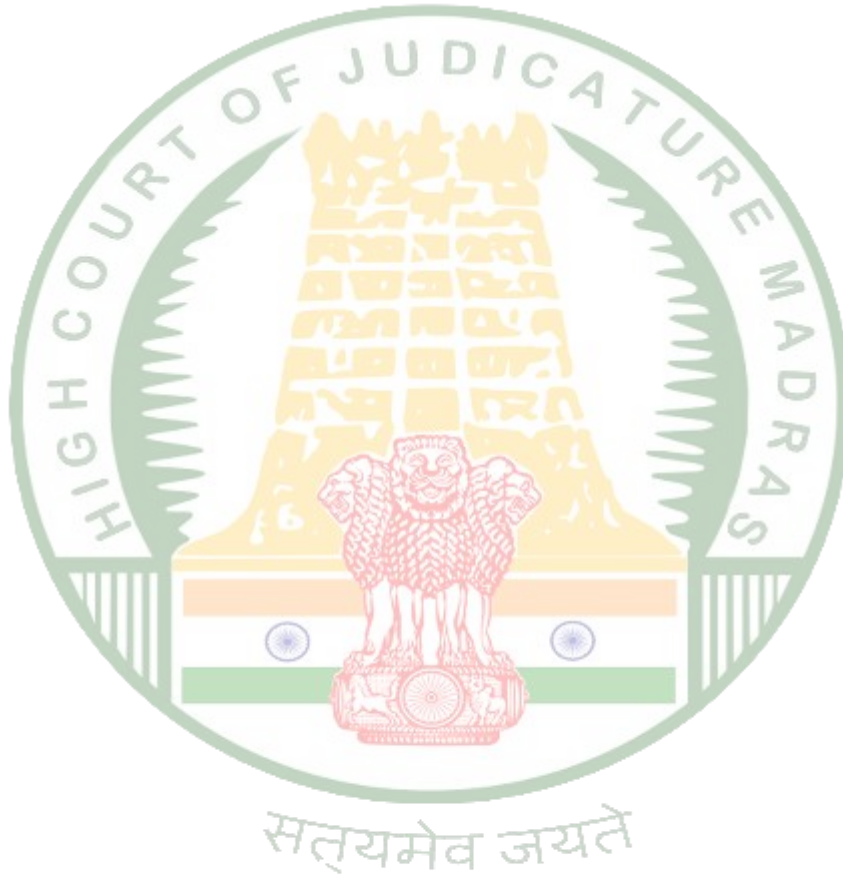
Index: Yes/No
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To

The II Additional District Munsif,
Erode.

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