

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.4506 of 2012
& M.P.No.1 of 2012

1.Elangovan
2.Mariyammal
3.Usharani
4.Rukmani

.. Petitioners

Vs.

1.Rangasamy
2.Ramasamy
3.Subramanian

.. Respondents

PRAYER: Civil Revision Petition filed under Section 227 of Constitution of India, against the fair and decretal order dated 13.06.2012, made in I.A.No.666 of 2011 in O.S.No.76 of 2005 on the file of District Munsif Court at Jayankondam.

For Petitioners : Mr.T.L.Thirumalaisamy

For R1 & R2 : Mr.S.Saravanakumar
for Mr.I.Abrar Md Abdullah

For R3 : No appearance

ORDER

This civil revision petition is filed against the the fair and decretal order dated 13.06.2012, made in I.A.No.666 of 2011 in O.S.No.76 of 2005 on the file of District Munsif Court at Jayankondam.

2. The petitioners and one deceased Seenivasan initially filed a suit in O.S.No.144 of 2002 against the first respondent for permanent injunction. The first respondent filed written statement on 26.11.2003 and denied all the allegations made by the petitioners. The petitioners are defendants 1 to 4, respondents 1 and 2 are the plaintiffs, third respondent is the fifth defendant in O.S.No.76 of 2005 on the file of District Munsif Court at Jayankondam. Pending suit in O.S.No.144 of 2002, the respondents 1 and 2 filed the subsequent suit in O.S.No.76 of 2005 for declaration, possession, mandatory injunction and for a permanent injunction. An Advocate Commissioner was appointed in I.A.No.101 of 2006 in O.S.No.144 of 2002. He inspected the suit properties in O.S.Nos. 144 of 2002 and 76 of 2005 and filed his report with plan.

The respondents 1 and 2 filed the present I.A.No.666 of 2011 for amendment to include the measurement mentioned by the Advocate Commissioner in the plan attached to the report of the Advocate Commissioner. According to the respondents 1 and 2, the Advocate Commissioner has given the extent of the entire property and encroachment by the petitioners. In view of the same, it is necessary to amend the plaint by including the measurement in the schedule of the plaint.

3. The petitioners filed counter affidavit and opposed the said application and submitted that if amendment is allowed, it will change the entire nature of the suit and the respondents 1 and 2 are introducing a new case and new cause of action and prayed for dismissal of the application.

4. The learned Judge, considering the averments in the plaint, affidavit, counter affidavit and report of the Advocate Commissioner with plan, allowed the application, holding that the said amendment is necessary to decide the relief sought for by the respondents 1 and 2 in the suit and it will not change the nature of the suit and cause of action.

5. Against the said order dated 13.06.2012, made in I.A.No.666 of 2011 in O.S.No.76 of 2005, the present civil revision petition is filed by the petitioners.

6. Heard the learned counsel appearing for the petitioners, respondents 1 and 2 and perused the materials available on record. Though notice was served on third respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

7. The learned counsel appearing for the petitioners submitted that there is vast difference between the plan filed by the respondents 1 and 2 along with the plaint and plan filed by the Advocate Commissioner and the petition for amendment is not maintainable.

8. From the materials on record, it is seen that the respondents 1 and 2 did not give measurements of the property to the schedule of the plaint. In the report of the Advocate

Commissioner appointed to inspect and measure the suit property, the Advocate Commissioner has mentioned the extent of the property and encroachment by the petitioners. The respondents 1 and 2 have sought for amendment to include the measurement as per the report of the Advocate Commissioner. In the relief sought for by respondents 1 and 2, the measurement of the properties are necessary to properly decide the issue, if they succeed to implement the decree.

9. The learned Judge, considering all the above facts and also comparing the plan filed by the respondents 1 and 2 along with the plaint and plan filed by the Advocate Commissioner, allowed the application as there is only minor discrepancies between the two properties. The finding of the learned Judge that the amendment will not amount to change in the character of the suit filed by the respondents 1 and 2 is a valid reason, based on the materials on record. In the circumstances, there is no illegality or irregularity warranting interference with the order of the learned trial Judge dated 13.06.2012. It is open to the petitioners to raise the issue with regard to their contention that the properties are different during trial and prove the same by letting in acceptable evidence.

V.M.VELUMANI, J.

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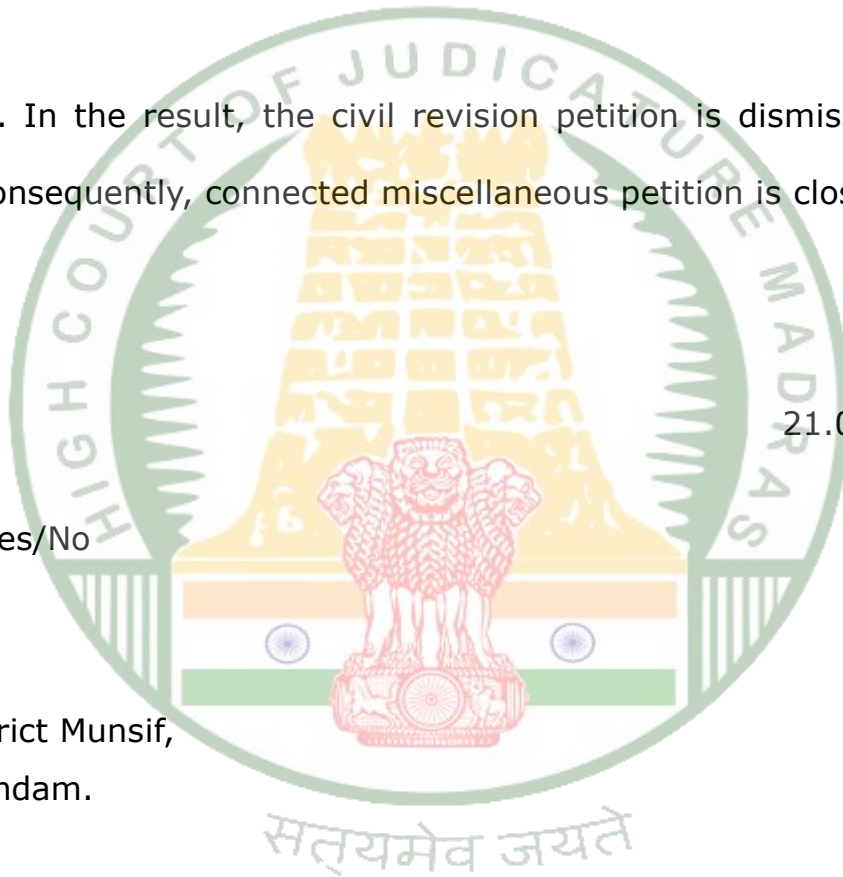
10. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

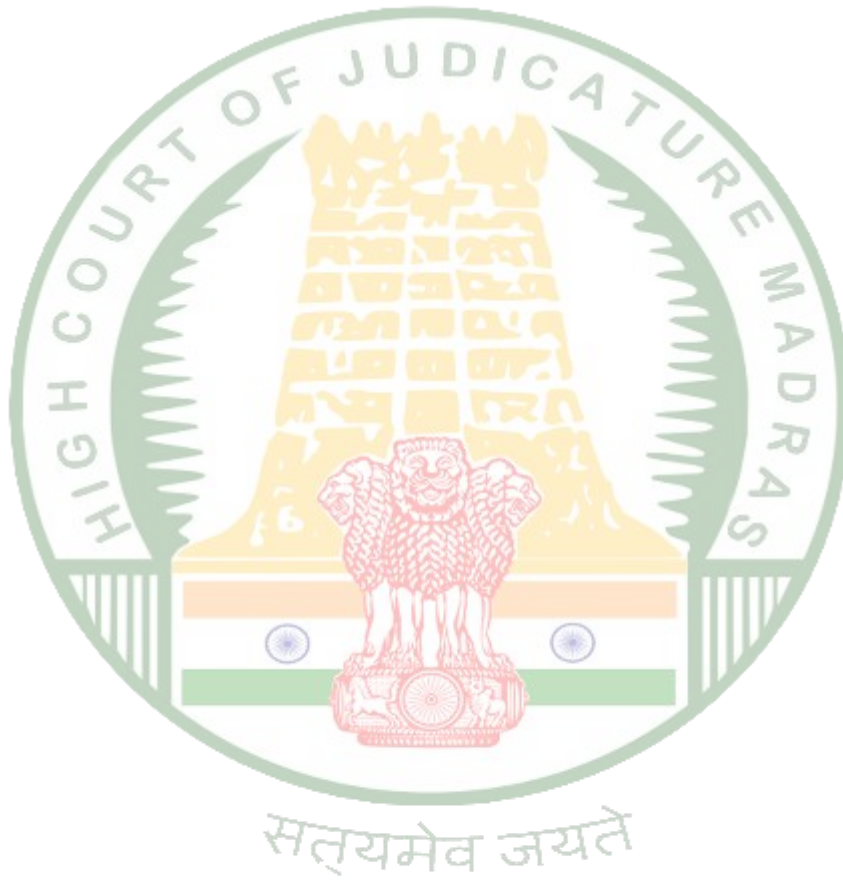
To

The District Munsif,
Jayankondam.



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