

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2015

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

CRP.(PD).No.1501 of 2015

and

M.P.No.1 of 2015

M.P.Elumalai

..Petitioner

Vs.

1.Arulmighu Thopu Theru Vinayagar
Alaya Nirmana Kuzhu
Athimanjeripet Village
Pallipattu Taluk

2.Megavarnan

3.Eswaran

4.V.N.Arumugham

5.M.A.Elumalai

6.B.N.Velan

.. Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 21.02.2014 passed in I.A.No. 52 of 2014 in O.S.No.31 of 2011 by the learned Subordinate Judge, Tiruttani, Tiruvallur District and allow the Civil Revision Petition.

For Petitioner : Mr.L.Dhamodaran

For Respondents : No appearance

ORDER

The prayer sought for in the present petition is to set aside the order dated 21.02.2014 passed in I.A.No. 52 of 2014 in O.S.No.31 of 2011 by the Hon'ble Subordinate Judge, Tiruttani, Tiruvallur District.

2. Heard Mr.L.Dhamodaran learned counsel for the petitioner. Though notice has been served on the respondents and their names printed in the cause list, none appeared on behalf of the respondents.

3. The order under challenge in the present application is rejection of the petitioner's request to amend the survey number in the schedule of property from S.No.37B to S.No.36/5A. The reason assigned by the petitioner in his application seeking for amendment under Order 6 Rule 17 is that he was made aware of such errors in the survey number, only after the Commissioner had inspected the property along with the surveyor. The Trial Court had disbelieved such a reasoning given by the petitioner herein and had found that the defendants had already brought to the notice of the plaintiffs that the

survey number was wrong in the written statement dated 05.07.2011 and therefore the petitioner, in not having taken steps for the past three years, is not entitled to seek such an amendment.

4. The learned counsel for the petitioner submitted that the suit has been filed for the relief of declaration of his title and mandatory injunction and that if the amendment is not ordered, grave injustice would be done to him. He further submitted that a sympathetic approach could be taken since the amendment sought for would not change the character of the suit or its cause of action.

5. Since there is no representation on behalf of the respondents, I am of the view that they have no remarks to offer. Though, this Court finds that there is no infirmity in the order of the trial Court in rejecting the petitioner's application under Order 6 Rule 17 on the ground of delay, in view of the fact that the amendment is eminent and absolutely necessary for the purpose of proper adjudication and also taking note of the fact that the suit has been instituted at the instance of the petitioner herein, which is pending for the past three years, it would be appropriate to extend a sympathetic approach to the petitioner and permit the amendment sought for.

6. In the light of the above observation, the order passed in I.A.No. 52 of 2014 in O.S.No.31 of 2011 is set aside. Consequently, the amendment sought for by the petitioner in his application in I.A.No.52 of 2014 seeking for deleting Survey No.37B from the schedule of property in the plaint in O.S.No.31 of 2011 and substituting with the survey No.36/5A is ordered.

7. Since the suit was at the stage of trial when the impugned order came to be passed, the learned Subordinate Judge, Tiruttani, Tiruvallur District shall endeavour to complete the suit proceedings as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed. No costs.

05.12.2015

Index:Yes/No

Internet:Yes/No

vsn/dh

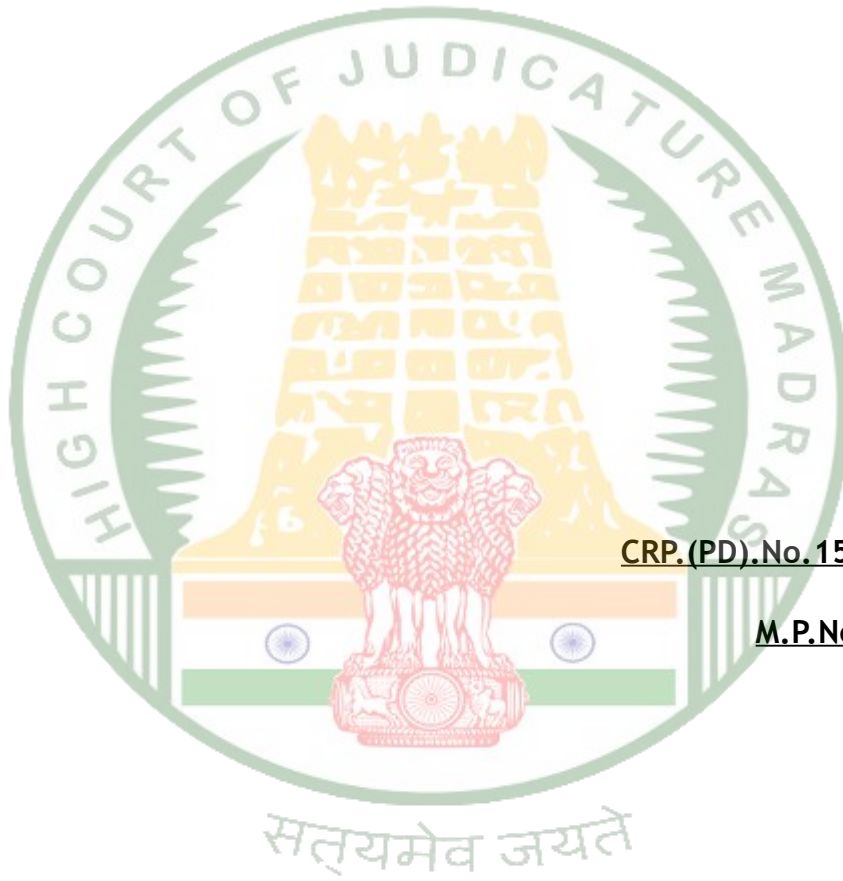
To

The learned Subordinate Judge,
Tiruttani,
Tiruvallur District.

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M.S.RAMESH, J.

vsn/dh



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