

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.10.2018
CORAM
THE HONOURABLE MS. JUSTICE P.T.ASHA
C.R.P.No.3722 of 2012
and
M.P.No.1 of 2012

M.Ravichandran

.... Petitioner

Vs

1.Mani @ Sengottian (Deceased)
2.Chinnasamy
3.Palaniammal
4.Thangammal
5.Maheswaran
6.Balasubramanian

(R4 to R6 brought on records as Legal Representatives
of the deceased 1st respondent vide order dated
05.12.2017 in C.M.P.Nos.14578 to 14580 of 2017 in
CRP.3722/12 (VMVJ)

.... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India to set aside the order passed in
I.A.No.544 of 2012 in O.S.No.615 of 2010 on the file of the
Principal District Munsif Court, Erode dated 07.08.2012.

For Petitioner : Ms.P.T.Ramadevi

For Respondents: Mr.Pitty Parthasarathy for R2 & R6

O R D E R

This Civil Revision Petition has been filed challenging the
refusal of the learned Principal District Munsif, Erode to
permit the revision petitioner to withdraw the suit in
O.S.No.615 of 2010 filed by him with liberty to file a fresh
suit on the very same cause of action.

2.The brief facts which are necessary for the disposal of
this case are as follows:

The revision petitioner had filed a suit in O.S.No.615
of 2010 before the Principal District Munsif Court, Erode for
the following reliefs:

- "a) declaring that the plaintiff is the absolute
owner of the property of the suit property;
- b) granting a permanent injunction restraining

the defendants, their men and agents, etc. from interfering in any other manner with the plaintiff's peaceful possession and enjoyment of the same;

c) demarcate the boundary line between the plaintiff's property and defendants' property namely between R.S.No.523/2 and 523/3B [Amended as per order in I.A.No.838/2011, dated 16.09.2011] with the help of qualified surveyor;"

3.The suit property is consisting of two items of property with the first item measuring an extent of 5 cents and the second item measuring an extent of 2 ½ cents. The revision petitioner had originally filed the suit with reference to Survey Nos.523/2 and 523/3, Pudur village, Erode. In the written statement filed by the respondents herein, they had contended that the property which the Civil revision petitioner was in occupation, was an extent situated in Survey Nos.523/2 and 523/3B besides raising other defences. Immediately, thereafter, the revision petitioner had filed an application seeking to amend the survey numbers from R.S.Nos.523/2 and 523/3 to R.S.Nos.523/2 and 523/3B by filing a petition in I.A.No.836 of 2011. When the suit was pending trial, the revision petitioner took out an application in I.A.No.1202 of 2007 for appointment of an advocate commissioner to inspect the property and fix a 'F' line between R.S.No.523/2 and 523/3B. The advocate commissioner had also submitted his report dated 20.02.2012.

4.After the Commissioner's report was taken on file, the revision petitioner came up with an application in I.A.No.544 of 2012 seeking permission to withdraw the suit in O.S.No.615 of 2010 with liberty to file a fresh suit for the same cause of action. The reason for seeking this relief has been narrated in Paragraph No.2 of the affidavit filed in support of the petition which is extracted herein:

"Then only I Came to know that the forgery work done by the respondents by sub-dividing the suit property by encroaching my property without my knowledge. Therefore, to avoid the technicality I am advised to withdraw the present suit to file a fresh suit with the same cause of action. Therefore, I may be permitted to withdraw the suit to file a fresh suit with the same cause of action. Otherwise I will be put to irreparable loss and great hardship."

5.The said application was resisted by the respondents by stating that the evidence was midway as the petitioner had already completed his oral evidence and therefore, at this juncture, he should not be allowed to withdraw the suit, that

too, with liberty to file a fresh suit.

6.The learned Principal District Munsif, Erode by order dated 07th August 2012, dismissed the said petition on the ground that the suit could be withdrawn with liberty only if there is a formal defect and there are no specific averments in the affidavit regarding such formal defect and no sufficient reason is adduced on the side of the revision petitioner. Challenging the said order, the revision petitioner is before this Court.

7.Heard Ms.P.T.Ramadevi, learned Counsel for the petitioner. She would vehemently argue that the petitioner was constrained to file the application since it was only after the report of the advocate commissioner had been filed, he had come to know that the respondents had encroached into the suit property and instead of filing an amendment petition, it would be better to file a comprehensive suit containing all the reliefs. She also submitted that the Court below was wrong in concluding that the application could not be allowed because the revision petitioner did not show a formal defect. She has also submitted the Judgment of this Court reported in 1998 (III) CTC 16, "Kokila and another Vs.K.S.Bhoopathy and five others" in order to buttress her contention. She would draw the attention of this Court to Paragraph No.4 of the said Judgment.

8.Per contra, Mr.Pitty Parthasarathy, learned Counsel arguing on behalf of the respondents would contend that the report of the advocate commissioner does not point out or refer to any encroachment on the side of the respondents and there is no reason whatsoever which has been given by the revision petitioner warranting the application.

9.Heard all the parties and perused the records. A perusal of the advocate commissioner's report would show that survey Nos.523/2 and 523/3B consist of an extent of 16 cents and the revision petitioner has filed the suit with reference to a total extent of 7 ½ cents in the said survey numbers. The affidavit filed in support of the petition does not also contain any details as to the extent or the manner in which the encroachment has been done by the respondents herein. Further, it is also to be borne in mind that the petitioner has completed his evidence and the respondents would have obtained certain admissions from him and by allowing the petition at this juncture, a valuable defence is lost to the respondents.

10.Hence, I find no infirmity in the order passed by the learned Principal District Munsif, Erode. In fine, the Civil Revision Petition is dismissed. However, there shall be no order as to costs.

11.The suit is of the year 2010 and it is also seen that the plaintiff has completed his oral evidence. The trial Court is therefore, directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

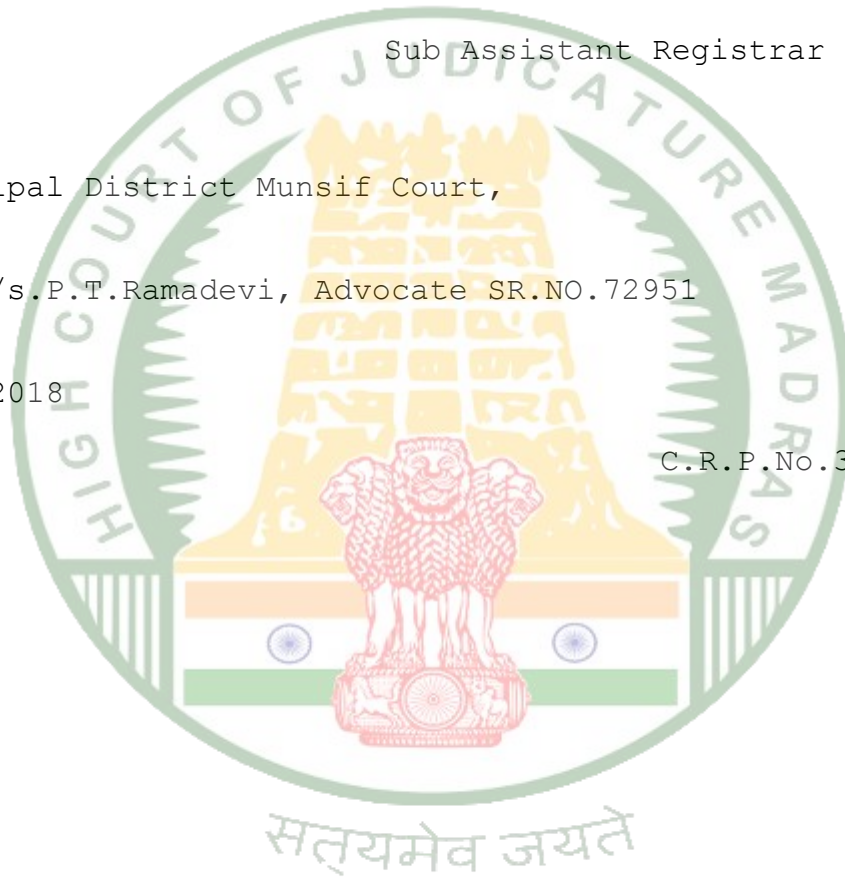
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To
The Principal District Munsif Court,
Erode.

+1cc to M/s.P.T.Ramadevi, Advocate SR.NO.72951

SPD(CO)
sm:14.11.2018

C.R.P.No.3722 of 2012



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