

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 2101 of 2017

and

CMP. No.10030 of 2017

1. Smt.K.Ponnammal
2. K.Subramani
3. K.Muthukumar

.. Petitioners

Vs

Rajammal

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.02.2017 in I.A.No.627 of 2016 in O.S.No.258 of 2011 on the file of the District Munsif's Court.

For Petitioners :Mr.C.R.Parasanan

For Respondent :Mr.J.Prithivi

ORDER

This Civil Revision Petition is filed against the fair and decretal orders dated 24.02.2017 in I.A.No.627 of 2016 in O.S.No.258 of 2011 on the file of the District Munsif's Court.

2. The learned counsel for the revision petitioners would submit that the respondent has filed the suit in O.S. No.258 of 2011 before the District Munsif, Thiruppur for declaration against the revision petitioners. Written statement has been filed by the petitioners. In the aforesaid suit, the respondent was examined as PW1 and she was also cross examined. At this stage, on 11.08.2016 the respondent has filed an application in I.A. No.627 of 2016 for amendment of plaint. The description of the suit property was wrongly mentioned as 'Western' and 'Eastern' instead of 'Northern' and 'Western' in the 13th line of the plaint and she wanted to delete the word 'Southern' and add 'Eastern' in the 14th line. According to her, recently the respondent came to know about the mistake with regard to the description of the schedule mentioned property. Therefore, the respondent has filed the present application for amendment. The aforesaid application has been allowed by the Court below. Challenging which, the present Civil Revision Petition has filed before this Court.

3. According to the learned counsel for the petitioners, the revision petitioners have filed a detailed counter against the said application by stating that the amendment sought for is belated stage. The respondent

was examined as PW1 and cross examination has also been concluded. At this stage, the respondent has filed the instant application for correction of boundaries in the suit property. When the suit has been filed for recovery of possession, the said proposed amendment is squarely barred by limitation. If the said application is allowed, it will change the character and nature of the suit.

4. According to the learned counsel for the respondent, the said amendment would not change the character and nature of the suit. Only due to the inadvertent mistake, it was wrongly mentioned in the schedule property. If the said amendment is not allowed, then the respondent's rights will be affected and in the event of succeeding in the suit, the same is in executable decree.

5. By considering the aforesaid submissions of both the parties and in the light of the decision of the *Hon'ble Supreme in the case of Sajjan Kumar Vs. Ram Kishan reported in (2005) 13 SCC Page 89, in Paragraph 5* has held that:

“5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has

failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit that amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit”

In the decision of the **Hon'bel Supreme Court** in the case of **Usha Devi Vs. Rijwan Ahamed and others reported in (2008) 3 SCC 717** which held as follows.

“16.As to the submission made on behalf of the respondents that the amendment will render the suit non-maintainable because it would not only materially change the suit property but also change the cause of action it has only to be pointed out that in order to allow the prayer for amendment the merit of the amendment is hardly a relevant consideration and it will be open to the respondent-defendants to raise their objection in regard to the amended

plaint by making any corresponding amendment in their written statement”

6. In view of the above decisions, this Court is of the view that if the said application is allowed, no prejudice would be caused to the revision petitioners. However, liberty is granted to the revision petitioners to raise their objections with regard to the said amendment at the time of arguments.

7. In the light of the above, there is no error or illegality in the order passed by the Court below. Hence, there is no warrants to interfere with the order passed by the Court below. Accordingly, the Civil Revision Petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

30.01.2018

Index: Yes/ No

Internet: Yes/No

Speaking Order/Non Speaking Order

rkp

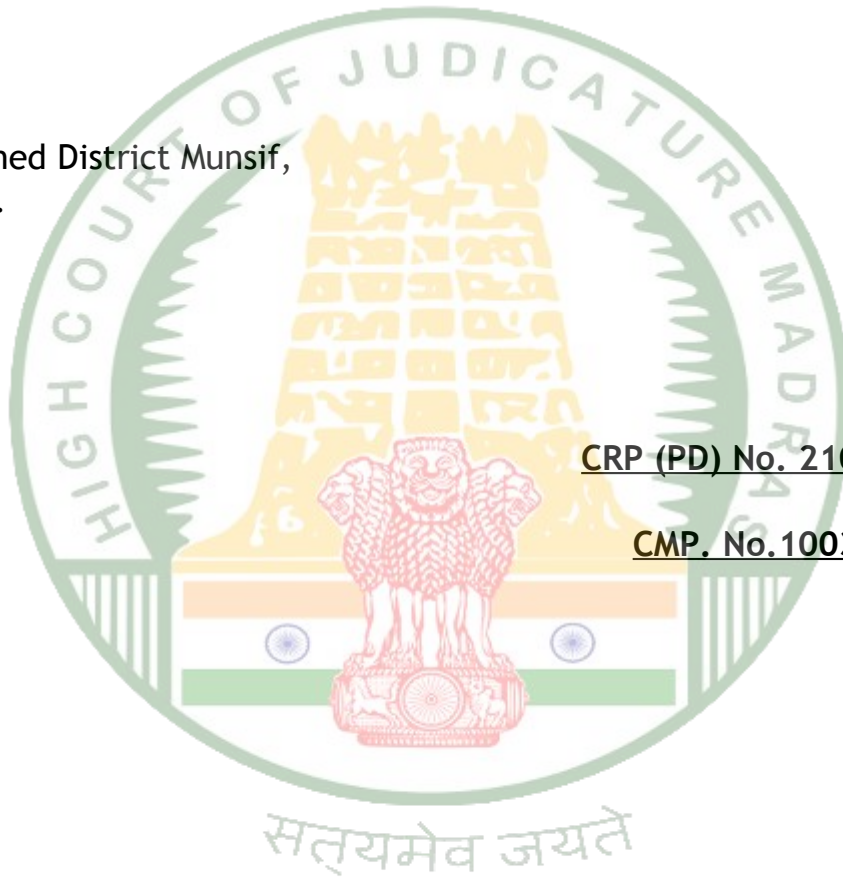
WEB COPY

D. KRISHNAKUMAR J.,

rkp

To

The learned District Munsif,
Tiruppur.



CRP (PD) No. 2101 of 2017
and
CMP. No.10030 of 2017

WEB COPY

30.01.2018