

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.2602 of 2017 and C.M.P.No.12414 of 2017

1.S.N.Balapattabi
2.S.P.Ramani ... Petitioners/Defendants

Vs.

Balanagalakshmi ... Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 21.06.2017 passed in I.A.No.710 of 2017 in O.S.No.2 of 2007 on the file of the III Additional District Court at Gobichettipalayam.

For Petitioners : Mr.M.Naraayanaswamy

For Respondent : Mr.R.Baskar

ORDER

This Civil Revision Petition is filed against the fair and decreetal order, dated 21.06.2017 passed in I.A.No.710 of 2017 in O.S.No.2 of 2007 on the file of the III Additional District Court at Gobichettipalayam.

2.The respondent herein has filed a suit for partition in O.S.No.2 of 2007 before the III Additional Judge, Gobichettipalayam. In the aforesaid suit, written statement has been filed by the petitioners claiming that the item Nos.1 to 10 of the suit properties are not come under the joint family properties and the respondent is claiming right in respect of item No.9 of the suit property against the second petitioner. In the aforesaid suit, an interlocutory application in I.A.No.1469 of 2016 has been filed by the respondent/plaintiff under Order 1 Rule 10 of the Code of Civil Procedure to implead the second petitioner herein/ proposed party as second defendant in the suit on the ground that the 9th item of the suit property stands jointly in the name of the respondent along with the second petitioner herein and also claiming right over the suit property. The revision petitioner herein filed a counter opposing the said application. However, the trial Court allowed the I.A.No.1469 of 2016 in O.S.No.2 of 2007 on 12.04.2017 and thereby, the second petitioner was impleaded as second defendant in the above suit. Pursuant to the order, dated 12.4.2017 impleading the second petitioner herein, the respondent has filed the present I.A.No.710 of 2017 for amendment of the plaint and

the court below has erroneously allowed the said application.

3.The learned counsel for the petitioner confines his arguments only in respect of item No.9 of the suit property by stating that the respondent/plaintiff has not stated anything about item No.9 of the suit property in the plaint and the respondent/plaintiff tried to introduce new facts by way of amendment. In so far as amendments in respect of other items, the learned counsel for the petitioner has no serious objection.

4.Per contra, the learned counsel appearing for the respondent/plaintiff submit that the respondent/plaintiff may be permitted to file an appropriate application in so far as item No.9 of the suit property.

5.The learned counsel for the petitioner has no serious objection for amendment in the plaint except item No.9 of the suit property. However, the learned counsel for the petitioner submitted that amendment cannot be permitted in so far as item No.9 of the suit property since the petitioner has not furnished any particulars of the item No.9 of the suit property in the plaint. Therefore, there is no bar for the respondent/plaintiff in amending the plaint except item No.9 of

the suit property. The respondent/plaintiff seeks liberty to file appropriate application before the trial court in so far as item No.9 of the suit property.

6.In the light of the above, the order passed by the learned III Additional District Judge, Gobichettipalayam, dated 21.6.2017 passed in I.A.No.710 of 2017 is set aside in so far as item No.9 of the suit property. Hence, the Civil revision petition is partly allowed. However, liberty is granted to the respondent/plaintiff to file an appropriate application before the trial court. No costs. Connected miscellaneous petition is closed.

15.02.2018

Speaking/Non-Speaking order

Index :Yes/No

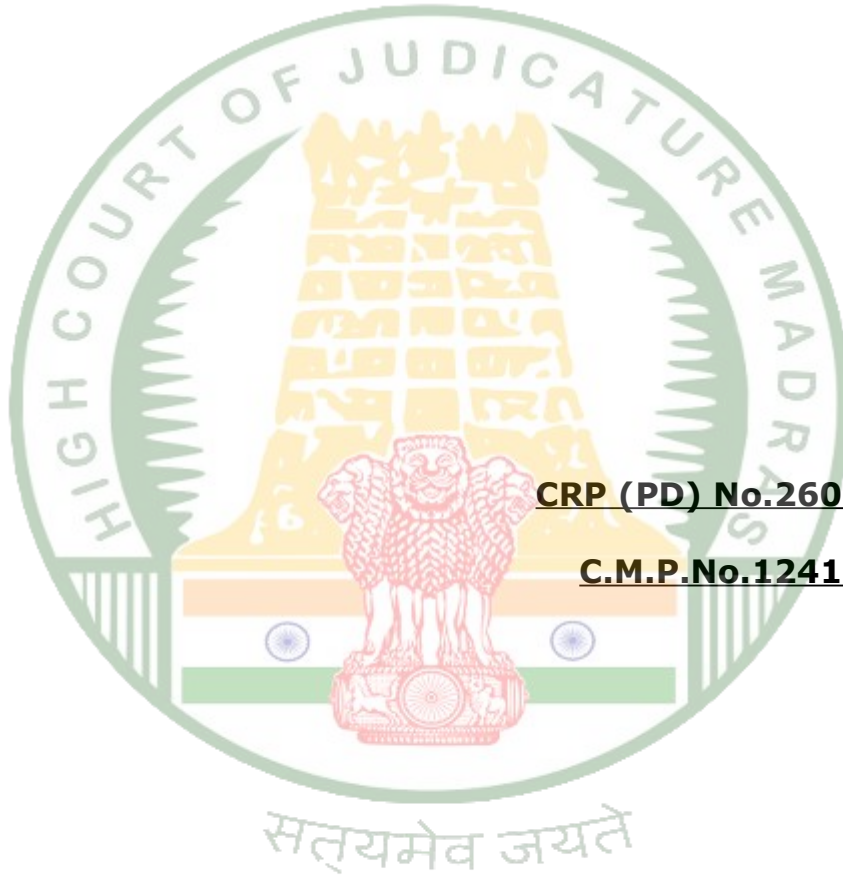
ah

To

The III Additional District Court, Gobichettipalayam.

D. KRISHNAKUMAR J.,

ah



CRP (PD) No.2602 of 2017
and
C.M.P.No.12414 of 2017

WEB COPY

15.02.2018