

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(PD).No.4650 of 2017
and
C.M.P.No.21931 of 2017

P.Ambigaidoss .. Petitioner

Vs.

S.Sekar .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 04.11.2017 passed in I.A.No.578 of 2017 in O.S.No.139 of 2015 on the file of Principal District Munsif Court, Cuddalore.

For Petitioner : Mr. R.Guru Raj

For Respondent : Mr.R.R.Pradheep

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ORDER

This civil revision petition has filed to set aside the fair and decretal order passed by the learned Principal District Munsif, Cuddalore, in I.A.No.578 of 2017 in O.S.No.139 of 2015 dated 04.11.2017.

2. According to the petitioner, the respondent has filed the suit in O.S.No.139 of 2015 against the petitioner before the District Munsif Court,

Cuddalore for declaration of title and permanent injunction. The defendant side evidence was closed. The petitioner has filed a suit in O.S.No.189 of 2008 for partition suit and obtained a decree. In the plaint schedule, boundaries of the schedule mentioned property were wrongly stated. Therefore, the petitioner has filed the application in I.A.No.578 of 207 in O.S.No.139 of 2015 for withdrawing the suit and seeking liberty to file fresh suit and the same was dismissed by the Court below. Hence the petitioner has filed the present civil revision petition before this Court.

3. The learned counsel for the petitioner would submit that the Court below has misconceived and erroneously dismissed the said application. The petitioner came to know that the preliminary decree passed in O.S.No.189 of 2008. The instant application has been filed to withdraw the suit and to file fresh suit. The Court below erroneously dismissed the said application. Hence the order passed by the Court below is liable to be set aside.

4. The learned counsel for the respondent would submit that the petitioner has filed the application only with an intention to drag on the proceedings. He would further submit that if there is a defect in the boundaries in the description of the suit property, the petitioner can file an appropriate application to amend the plaint and seeking for the relief. Without resorting to the said remedy, filing the present application to withdraw the suit with liberty to file fresh suit is not maintainable. Insofar as, the any other relief to challenge the decree passed in earlier suit, he has to

approach before the appropriate forum for challenging the decree in O.S.No.189 of 2008, in accordance with provisions of law.

5. In view of the submission made by the learned counsel for both sides, this Court is inclined to pass the following orders:

i) The impugned order passed in I.A.No.578 of 2017 in O.S.No.139 of 2015 by the learned Principal District Munsif Court, Cuddalore is hereby confirmed.

ii) It is open to the petitioner to file appropriate application before the court below, to amend the description of the property in the aforesaid suit. It is also open to the petitioner to challenge the Judgment and decree passed by the Court below in O.S.No.189 of 2015 in accordance with provision of law.

6. This civil revision petition is dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Internet : Yes/No

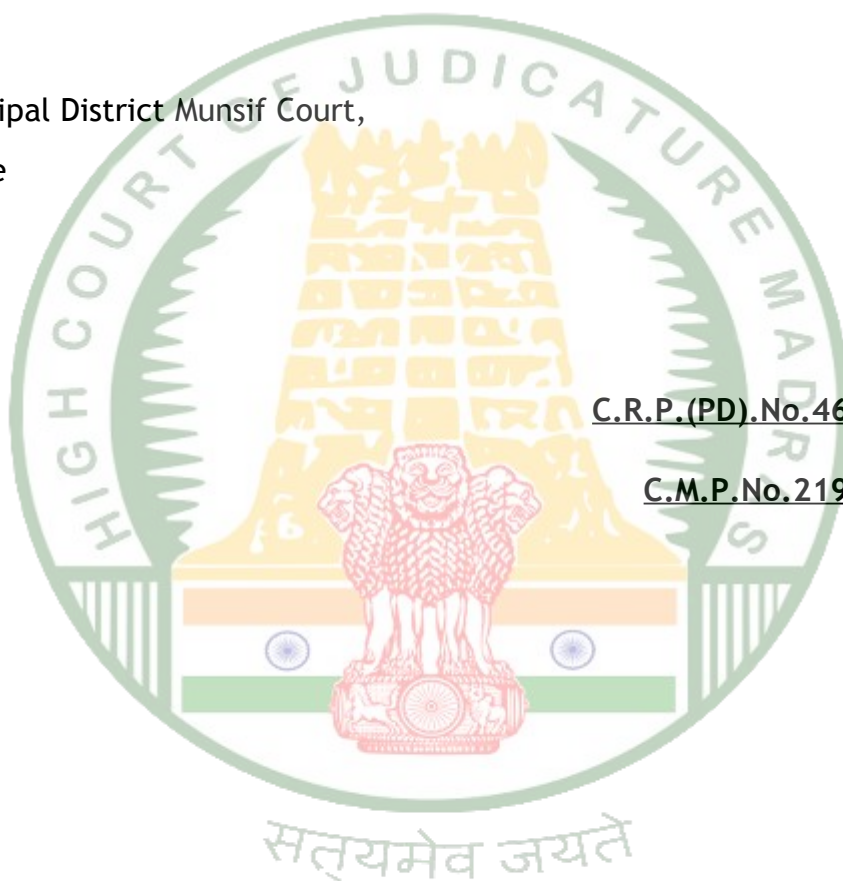
Speaking Order/Non Speaking Order

D.KRISHNAKUMAR,J.

kkd

To

The Principal District Munsif Court,
Cuddalore



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and
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