

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3098 of 2015
and M.P.No.1 of 2015

Kandhasamy

..Petitioner

Vs.

1.Venkatachalam
2.Subramaniam
3.Vadivel
4.Marimuthu
5.Suresh
6.Murugaiyan@Kannan
7.Gopinath

8.The District Collector
Collectorate, Salem.

9.The Tahsildhar
Mettur Taluk office
Mettur.

10.The Village Administrative Officer
Avadathur village
Mettur Taluk
Salem District.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated

04.02.2015 made in I.A.No.973 of 2014 in O.S.No.316 of 2011 on the file of the District Munsif Court, Mettur.

For Petitioner : Mr.T.M.Hariharan

For R1 to R5 : Mr.A.Sundaravadhanan

For R6 to R9 : No appearance

For R10 : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 04.02.2015 made in I.A.No.973 of 2014 in O.S.No.316 of 2011 on the file of the District Munsif Court, Mettur.

2. The petitioner is third defendant, respondents 1 to 5 are the plaintiffs, respondents 6 to 10 are the defendants 1, 2, 4 to 6 in O.S.No.316 of 2011 on the file of the District Munsif Court, Mettur. The respondents 1 to 5 filed the said suit for permanent injunction restraining the respondents 6, 7 and petitioner with regard to their possession and mandatory injunction directing the respondents 8 to 10 to sub-divide 'A' and 'B' schedule properties and to issue patta in the name of the respondents 1 to 5. The 6th respondent filed written

statement and the same is adopted by the 7th respondent and are contesting the suit. Before commencement of trial, the respondents 1 to 5 filed I.A.No.973 of 2014 for amendment of the plaint to delete item Nos.2 to 5 in A schedule property and to correct the extent of the first item in the A schedule property as 2 acres 66 cents instead of 0.66 acres and description of the B schedule property with regard to the extent and boundaries.

3. According to the respondents 1 to 5, due to typographical error, mistakes have crept in. They came to know about the mistakes subsequently and filed the petition for amendment immediately.

4. The petitioner filed counter affidavit and denied the averments made by the respondents 1 to 5 in the said application and contended that without knowing the properties, the respondents 1 to 5 have come out with the suit, which is not maintainable. The alleged mistake in the description of the property is not a typographical error. If amendment is allowed, it would change the entire character of the suit and introduce a new cause of action.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and description of the property in the plaint, allowed the application holding that amendment sought for is pre-trial amendment and the petitioner and other defendants have a right to file additional written statement.

6. Against the said order dated 04.02.2015 made in I.A.No.973 of 2014 in O.S.No.316 of 2011, the present Civil Revision Petition is filed by the petitioner/3rd defendant.

7. Heard the learned counsel for the petitioner as well as the respondents 1 to 5 and perused the materials available on record.

8. The respondents 1 to 5 filed suit for permanent injunction and mandatory injunction. In order to decide the issue in the suit, the correct description of the property is necessary. In the present case, the respondents 1 to 5 are seeking amendment in the schedule of property by deleting Item Nos.2 to 5 in 'A' schedule property and to correct extent of the first item in 'A' schedule property as 2 acres 66 cents instead of 0.66 acres. Similarly, the amendment sought for in respect of 'B' schedule property is with

regard to the extent and boundaries. The respondents 1 to 5 seek amendment with regard to property mentioned therein. The amendment sought for cannot be said to change the character of the suit or introducing new cause of action. The reason given by the respondents 1 to 5 that the mistakes had crept in due to typographical error is acceptable. It is well settled that pre-trial amendment must be considered liberally as no prejudice would be caused to other party as they have a right to file additional written statement.

9. The learned Judge considered all the above facts in proper perspective and allowed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 04.02.2015.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

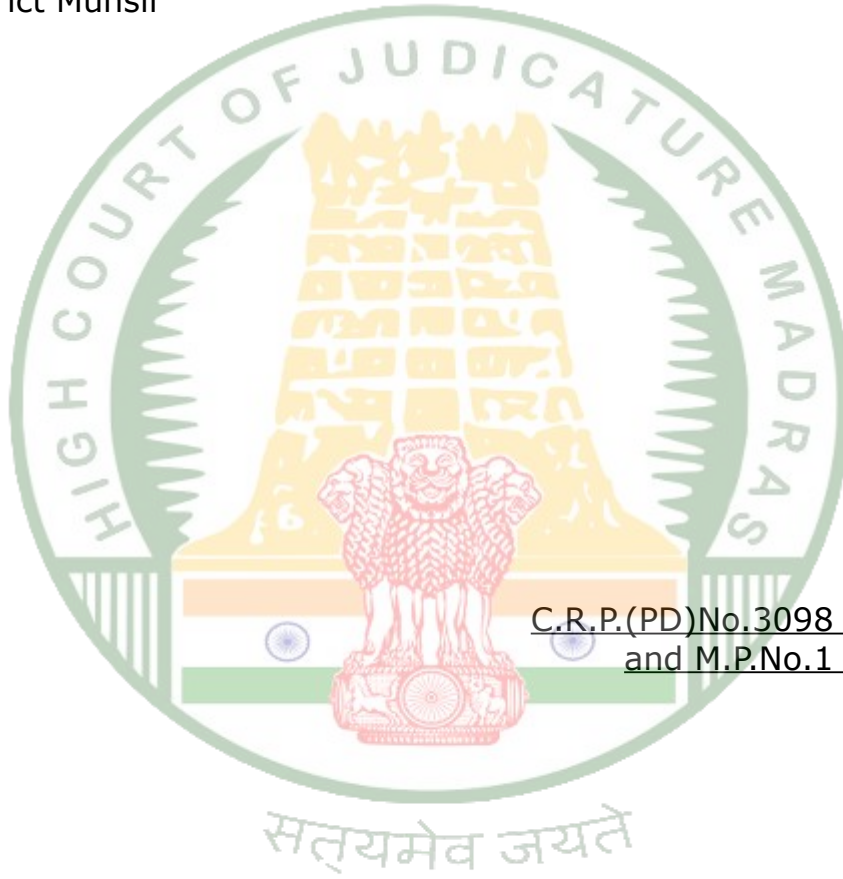
23.01.2018

kj

V.M.VELUMANI,J.

kj

To
The District Munsif
Mettur.



C.R.P.(PD)No.3098 of 2015
and M.P.No.1 of 2015

WEB COPY

23.01.2018