

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4628 of 2011
& M.P.No.1 of 2011

Kuppayammal (died)

1.Saroja (died)

2.Krishnaveni

3.Dhanabaggiyam

4.Doss

5.Chandrasekaran

6.Santhi

7.Veerappan

8.Rangasamy

(Petitioners 4 to 8 brought on record
as legal heirs of the deceased first
petitioner viz., Saroja vide Court order
dated 26.02.2018 made in C.M.P.Nos.1804
and 1805 of 2016 in C.R.P.No.4628 of 2011)

.. Petitioners

Vs.

1.Jayaraman

2.Sekar

3.Ramanathan

4.Chandran

5.Mariyayee

6.Ranganathan

7.Kamala

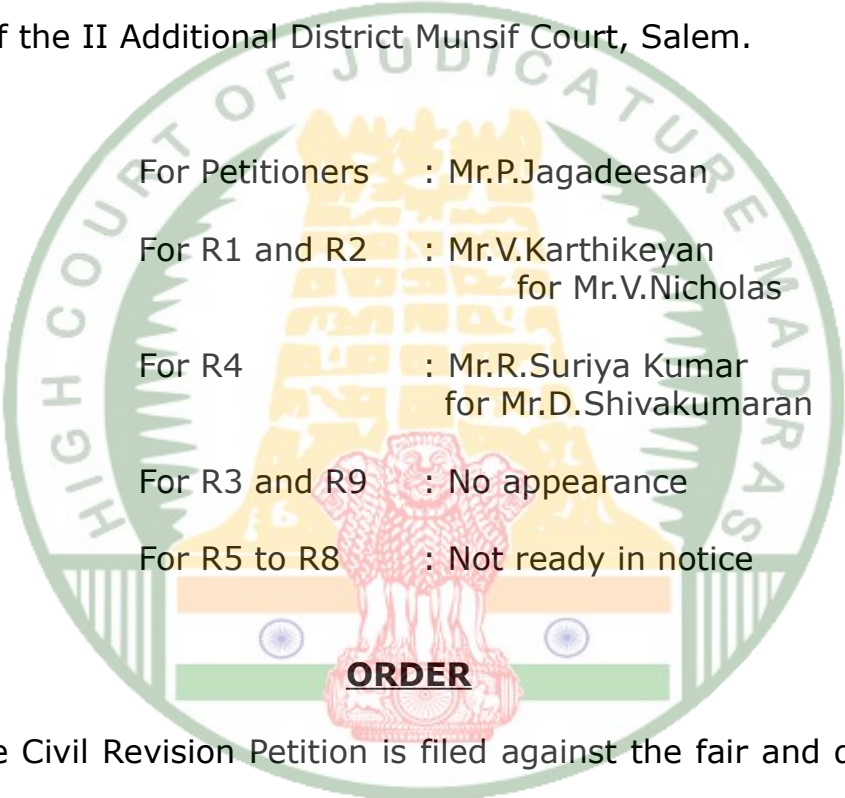
8.Rani

9.Jaya

.. Respondents

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Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 14.06.2011 made in I.A.No.81 of 2010 in O.S.No.1490 of 2004 on the file of the II Additional District Munsif Court, Salem.



For Petitioners : Mr.P.Jagadeesan
For R1 and R2 : Mr.V.Karthikeyan
for Mr.V.Nicholas
For R4 : Mr.R.Suriya Kumar
for Mr.D.Shivakumaran
For R3 and R9 : No appearance
For R5 to R8 : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 14.06.2011 made in I.A.No.81 of 2010 in O.S.No.1490 of 2004 on the file of the II Additional District Munsif Court, Salem.

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2.The petitioners are plaintiffs, respondents 1 to 8 are the defendants and 9th respondent is the fifth plaintiff in O.S.No.1490 of 2004 on the file of the II Additional District Munsif Court, Salem.

The petitioners filed the said suit for declaration and injunction. The respondents 1 to 4, 7 and 8 filed separate written statements and respondents 1 to 4 also filed separate additional written statements and are contesting the suit. P.W.1 was examined in chief and was cross-examined by the counsel for respondents 1 and 2. At that stage, the petitioners filed I.A.No.81 of 2010 for amendment under Order VI Rule 17 and Section 151 C.P.C. to include at the end of the description of the property that "there are three tiled houses, three asbestos roof buildings and one terraced house with in right of way".

3.According to the petitioners, they have made averments in the plaint the existence of the houses and payment of property tax to the Municipality. By inadvertence, they have not mentioned about these houses in the schedule to the plaint.

4.The respondents 1 to 3 filed separate counter affidavits and contended that the petitioners have put up tiled roof over the existing houses only one month back and hence, filed amendment application. The third respondent has contended that the petitioners have not stated in which survey number or door number, the

houses are situate. The house of the third respondent is situated in S.Nos.6 and 7. The petitioners have filed number of applications even for amendment and filed Civil Revision Petition before this Court and appeal before the Hon'ble Apex Court. The petitioners have not given any reason for not filing this application for amendment earlier, when they filed other applications.

5.The learned Judge considering the averments made in the affidavit, counter affidavit, the fact that the trial has commenced, P.W.1 was examined in chief and was cross-examined by the respondents 1 and 2 and the petitioners have not given any reason for filing the present application in belated stage, dismissed the application applying the principles laid down under Order VI Rule 17 C.P.C.

6.Against the said order of dismissal dated 14.06.2011 made in I.A.No.81 of 2010 in O.S.No.1490 of 2004, the present Civil Revision Petition is filed by the petitioners.

7.Heard the learned counsel for the petitioners as well as the respondents 1, 2 and 4 and perused the materials available on

record.

8. From the materials available on record, it is seen that the contention of the petitioners that they have made averments in the plaint with regard to existence of houses and payment of tax to the Municipality is not correct. From the averments made in the plaint, it is seen that the petitioners have mentioned only existence of the thatched houses and also mentioned that "now there is only a vacant site". By amendment sought for in the present application, the petitioners are seeking to include three tiled houses, three asbestos roof buildings and one terraced house with right of way. The petitioners by this amendment are seeking to introduce a new cause of action and new case. The petitioners have sought for amendment after commencement of trial. The petitioners have not alleged and proved that inspite of due diligence, they could not have filed application for amendment before commencement of trial. Originally, the suit was filed in the year 1994 as O.S.No.766 of 1994 on the file of the Subordinate Court, Salem and transferred to II Additional District Munsif Court, Salem and renumbered as O.S.No.1490 of 2004. The suit was 16 years old, when the application was filed and now the suit is pending for more than 24 years. The petitioners have not made any case for amendment at

this belated stage.

9.The learned Judge has properly appreciated the scope of Order VI Rule 17 C.P.C. and dismissed 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 14.06.2011.

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

05.03.2018

Index : Yes/No

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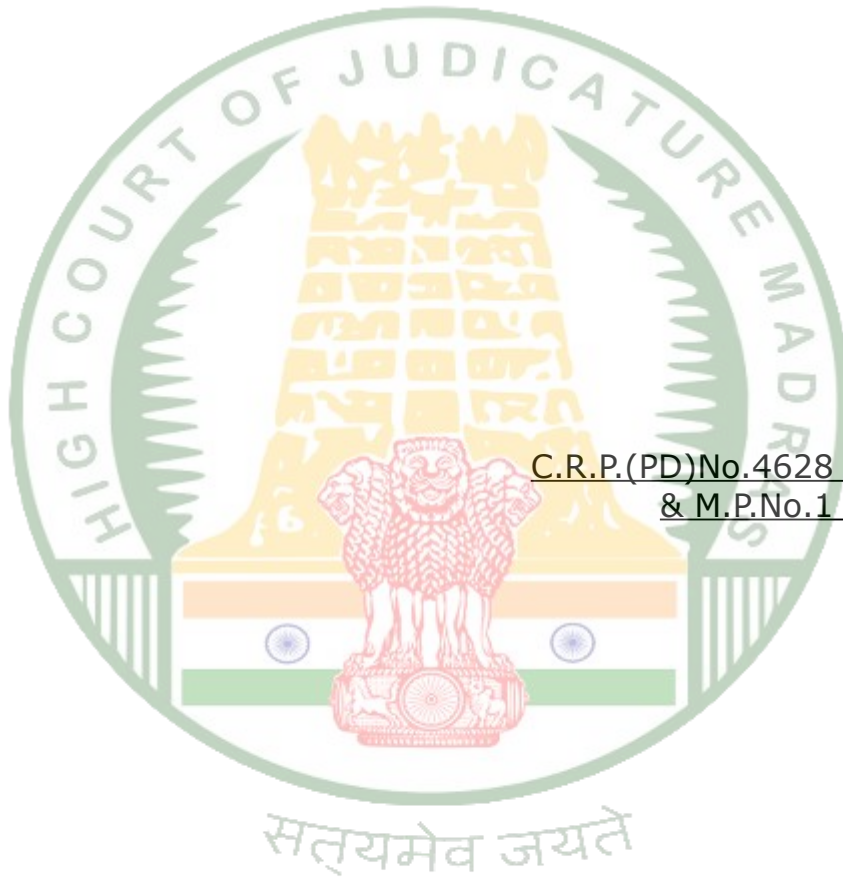
To

The III Additional Subordinate Judge
Coimbatore.

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V.M.VELUMANI, J.

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