

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

**C.R.P.(PD).No.4912 of 2011**

**and**

**M.P.No.1 of 2011**

1.Rathanam

2. Loganayagi

... Petitioners

Vs

1.K.K.Chandran

2. K.K.Sakthivel

3. K.K.Murthy

4. Subramanian

5. Sekar

6. Sundaram

7. Ayyavu

8. Chenniammal

9. Nataraj

10. Deivasigamani

11. Mariammal

12. Rangasamy

13. Velusamy

14. Dhanabakkiyam

15. Ramasamy

16. The Managing Trustee  
of Kongu Institution,  
Kongu Higher Secondary School,  
Kunnathur.

(R4 to R13, R15, R16 – remained  
ex-parte before the Trial Court)

... Respondents

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India as against the order dated 15.09.2011 passed in I.A.No.672 of 2011 in O.S.No.89 of 2009 on the file of the Sub-Court, Perundurai, as prayed for to set aside the same.

For Petitioners : Ms.J.Prithivi  
for Mr.S.Kaithamalai Kumaran

For Respondents 1 to 3 & 14 : No Appearance

**ORDER**

The plaintiffs in O.S.No.89 of 2009 on the file of the Sub-Court, Perundurai, have come forward with this revision petition challenging an order in I.A.No.672 of 2011, which they had filed seeking an amendment to the prayer sought in the suit.

2. The brief case of the petitioners is that the suit property and others originally belonged to Palanimooppan. He had three sons namely Chenni Mooppan, Natarajan and Ayyavu. There was a partition among these three brothers, based on which, the properties were partitioned. Besides, a list too was prepared based on the oral partition, and in both of which, specific portions were allotted to these three brothers.

3. The 1<sup>st</sup> plaintiff has purchased some of the items of the properties from the heirs of Nataraj, whereas the 2<sup>nd</sup> plaintiff has purchased the property from the heir of Chennimoooppa. As there was a threat to their possession from the defendants, more particularly, defendants 1 to 3, the suit was laid for bare injunction.

4. In the written statement, the plaintiffs' title was disputed by defendants 1 to 3.

5. The trial of the suit has concluded and the case is posted for advancing the final argument in the suit. At this point of time, the plaintiffs had taken out I.A.No.672 of 2011 for incorporating a new prayer for declaring their title. This petition was resisted strongly by the defendants 1 to 3. However, the prayer for amending the plaint sought before the trial court was rejected by it on the ground that the same was filed after considerable delay and after the closure of the trial of the suit.

6. The respondents have served with notice but no one appeared through counsel.

7. The learned counsel for the petitioners submitted that the

amendment was required especially to get over a possible question of law in that since the defendants 1 to 3 are disputing the title of the petitioners/plaintiffs, a declaration of their title might be essential. The learned counsel further submitted that the nature of the prayer sought will not in any way alter the character of the suit. She added that even in the case of suit for bare injunction, the Court may have to incidentally decide the title of the plaintiffs, and the prayer now sought to be introduced by way of amendment will only make it a direct finding. In other words, what is sought to be decided incidentally is converted into substantial question of title of the plaintiffs over the suit properties. She also relied on the authority in the case of **Abdul Rehman & Anr. Vs. Mohd.Ruldu & Others** [2013-1-L.W.213].

8. The learned counsel for the petitioners also submitted that the defendants 1 to 3 themselves have filed O.S.No.90 of 2009 before the Sub-Court, Perundurai, seeking a declaration that they are the co-sharers of the suit property along with the revision petitioners herein. This suit, according to her, was dismissed on 10.12.2011 by the said Court on the ground that the plaintiffs therein (defendants 1 to 3 in O.S.No.89 of 2009) ought to have filed a suit for partition. Only copy of this plaint is circulated. The learned counsel also added that so far

as the present suit is concerned no new evidence need be adduced based on the current efforts of the plaintiffs/petitioners to substantiate their title, except that might have occasioned by any subsequent events.

9. It would have been appreciable if the plaint was amended before the trial had commenced, since the written statement was filed long prior to that. However, Courts do not function to discipline the litigants all the time but to advance the cause of justice. Here is the case where the petitioners' title to the suit property is disputed by defendants 1 to 3, and the petitioner in their anxiety not to leave any stone unturned in their litigious pursuit, now seek an amendment to the prayer. If the same is denied now, there is a strong possibility of multiplicity of proceedings in future, wherein it may be debated whether the finding on title in an injunction suit is incidental or a direct and substantial finding. Since the counsel for the petitioner has also submitted that the trial need not be reopened to adduce any evidence, there would be no inconvenience to the other side either.

10. Accordingly, this Civil Revision Petition is allowed and the Order of the Sub-Court, Perundurai, dated 15.09.2011 passed in I.A.No.672 of 2011 in O.S.No.89 of 2009 is set aside. The trial court is directed

to dispose of the suit within in a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

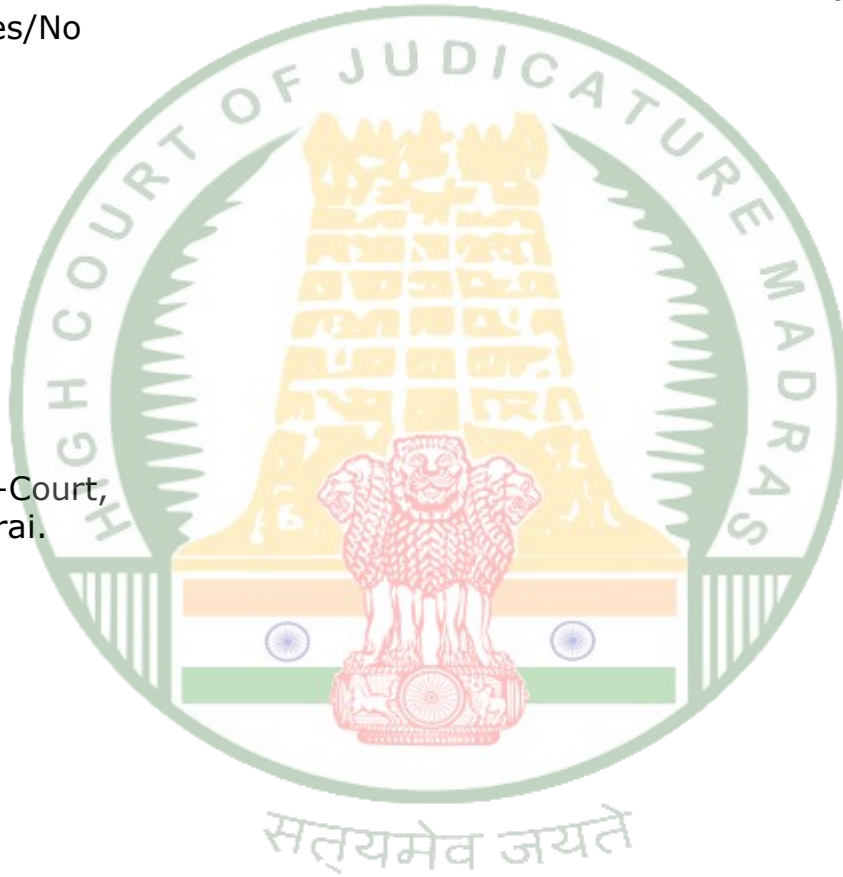
09.04.2018

Index:Yes/No

ssn

To

The Sub-Court,  
Perundurai.



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**N.SESHASAYEE, J.,**



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