

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4519 of 2015
and
M.P.No.1 of 2015

Manikodi

.. Petitioner

Vs.

1.Adhimoolam

2.Raju

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the constitution of India, against the fair and decretal order dated 03.02.2015 made in I.A.No.3278 of 2014 in O.S.No.101 of 2012 on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioner : Mr.M.Ganesh
For Respondents : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.02.2015 made in I.A.No.3278 of 2014 in O.S.No.101 of 2012 on the file of the Principal District Munsif Court, Kallakurichi.

2. The petitioner is second defendant, first respondent is plaintiff and second respondent is first defendant in O.S.No.101 of 2012 on the file of the Principal District Munsif Court, Kallakurichi. The first respondent filed the said suit for declaration that the sale deed dated 10.07.2009 bearing document No.2653 of 2009 executed by the second respondent in favour of the petitioner as null and void and for declaration that the first respondent is the absolute owner of the suit property and for consequential injunction. The petitioner filed written statement and denied all the averments made by the first respondent. According to the petitioner, she has purchased 2 cents of the land and she is not claiming any title to 34 cents mentioned in the suit schedule property. In the suit schedule property, first respondent has given extent of land as 34 cents. First respondent has filed I.A.No.3278 of 2014 under Order VI Rule 17 and Section 151 C.P.C. to amend the extent of the land mentioned in the suit schedule property as 36 cents instead of 34 cents.

3. According to the first respondent, from the date of purchase, he is in possession and enjoyment of 36 cents and patta No.147 has been issued in his name for 36 cents. The boundaries of the property are one and the same.

4. The petitioner filed counter affidavit and contended that by amendment, first respondent is introducing a new case and new cause of action. The first respondent has purchased only 34 cents and he cannot claim title for 36 cents. The 2 cents are purchased by the petitioner. The Advocate Commissioner in his report has stated that extent of 34 cents and another extent of 2 cents are separate and has not stated that first respondent is in possession of entire 36 cents and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and the fact that it is a pre-trial amendment and rival contentions can be decided only at the time of trial, allowed the application.

6. Against the said order dated 03.02.2015 made in I.A.No.3278 of 2014 in O.S.No.101 of 2012, the present Civil Revision Petition is filed by the petitioner/second defendant.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice were served on the respondents privately and their names are printed in the cause list,

there is no representation on behalf of the respondents either in person or through counsel.

8. From the materials available on record, it is seen that the first respondent has filed the suit for declaration that the sale deed dated 10.07.2009 executed by the second respondent in favour of the petitioner is null and void and for declaration of title to the suit property. The first respondent is seeking amendment of extent of the land mentioned in the suit schedule property as 36 cents instead of 34 cents. In the sale deed dated 10.07.2009, extent of the land is 2 cents and in the schedule to the plaint in respect of declaration of title, first respondent has mentioned the extent as 34 cents. The first respondent is seeking amendment of extent to the schedule to the plaint as 36 cents and he is not seeking amendment of survey number or boundaries. According to the first respondent, patta has been issued to him for entire 36 cents and he is in possession and enjoyment of 36 cents.

9. Whether the first respondent is in possession of 36 cents or not can be decided only by letting in evidence at the time of trial and whether the first respondent is entitled for declaration that the

sale deed dated 10.07.2009 executed by the second respondent in favour of the petitioner is null and void also can be decided only by appreciating evidence let in by the parties. By the present amendment, first respondent is not introducing any new cause of action or new case. Further, this is pre-trial amendment and the petitioner will have an opportunity to file additional written statement and put forth her defence before commencement of trial.

10. The learned Judge has considered all the above facts in proper perspective 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 03.02.2015.

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

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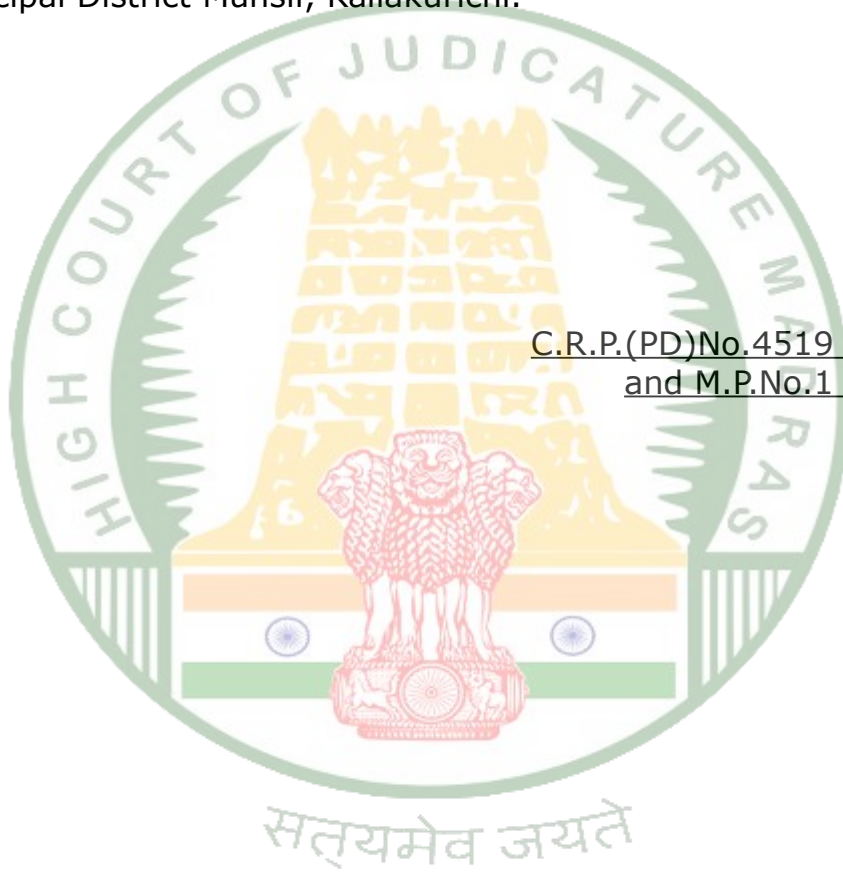
28.02.2018

Index:Yes/No
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V.M.VELUMANI,J.

Kj

To
The Principal District Munsif, Kallakurichi.



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