

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.580 of 2015
and M.P.No.1 of 2015

1.Venkatasamy (Died)
2.Rajamani

.. Petitioners

(2nd petitioner is brought on record as
L.R of the deceased 1st petitioner vide
Court order dated 20.02.2018 made in
C.M.P.Nos.3232 to 3234/2018 in C.R.P.No.580/2015)

Vs.

1.Devaraj
2.Indirani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 31.02.2014 made in I.A.No.732 of 2011 in O.S.No.387 of 2010 on the file of the Principal District Munsif Court cum Judicial Magistrate, Thiruvannamalai.

For Petitioners : Mr.P.G.Thiyagu

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal

order dated 31.02.2014 made in I.A.No.732 of 2011 in O.S.No.387 of 2010 on the file of the Principal District Munsif Court cum Judicial Magistrate, Thiruvannamalai.

2.The deceased first petitioner is the plaintiff, second petitioner is the legal heir of the deceased plaintiff and respondents are the defendants in O.S.No.387 of 2010 on the file of the Principal District Munsif Court cum Judicial Magistrate, Thiruvannamalai. Originally the deceased first petitioner filed the said suit for declaration of title of 'B' schedule property and for recovery of possession of the said 'B' schedule property. The respondents filed written statement on 20.06.2011 and are contesting the suit. When the suit was posted in the special list for trial, the first petitioner filed I.A.No.732 of 2011 under Order XXIII Rule 1 of C.P.C for permission to withdraw the suit with liberty to file fresh suit on the same cause of action. According to the deceased first petitioner, in the plaint and schedule to the plaint, the name of the village and various settlement deeds are not mentioned in the plaint. Only after he changed his previous counsel and engaged the present counsel, he came to know about this defect and typographical error and sought the relief to withdraw the suit to file fresh suit.

3.The first respondent filed counter affidavit and opposed the said application.

4.The learned Judge considering Order XXIII Rule 1 of C.P.C, dismissed the application, holding that the application filed for permission to withdraw the suit can be permitted with liberty to file fresh suit on the same cause of action only when there is a formal defect in the plaint and if there is sufficient ground to allow the application.

5.Against the said order of dismissal dated 31.02.2014 made in I.A.No.732 of 2011 in O.S.No.387 of 2010, the petitioner has come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioners and perused the materials available on record. Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

7.A reading of the affidavit filed in support of the present petition shows that the deceased first petitioner has mentioned so

many facts which are not mentioned in the plaint. This failure will not amount to formal defect entitled to the deceased first petitioner to withdraw the suit with liberty to file fresh suit on the same cause of action. The deceased first petitioner has stated that his previous counsel who filed the suit has failed to mention these facts and the learned Judge took note of the fact that the counsel filed change of vakalat in January 2011, the respondent filed written statement on 20.06.2011 and deceased first petitioner filed the present application only in November 2011 when the suit was posted in the special list for trial and held that present application is belated one and deceased first petitioner has not filed application for amendment of the plaint before commencement of trial as per law. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 31.02.2014 made in I.A.No.732 of 2011 in O.S.No.387 of 2010.

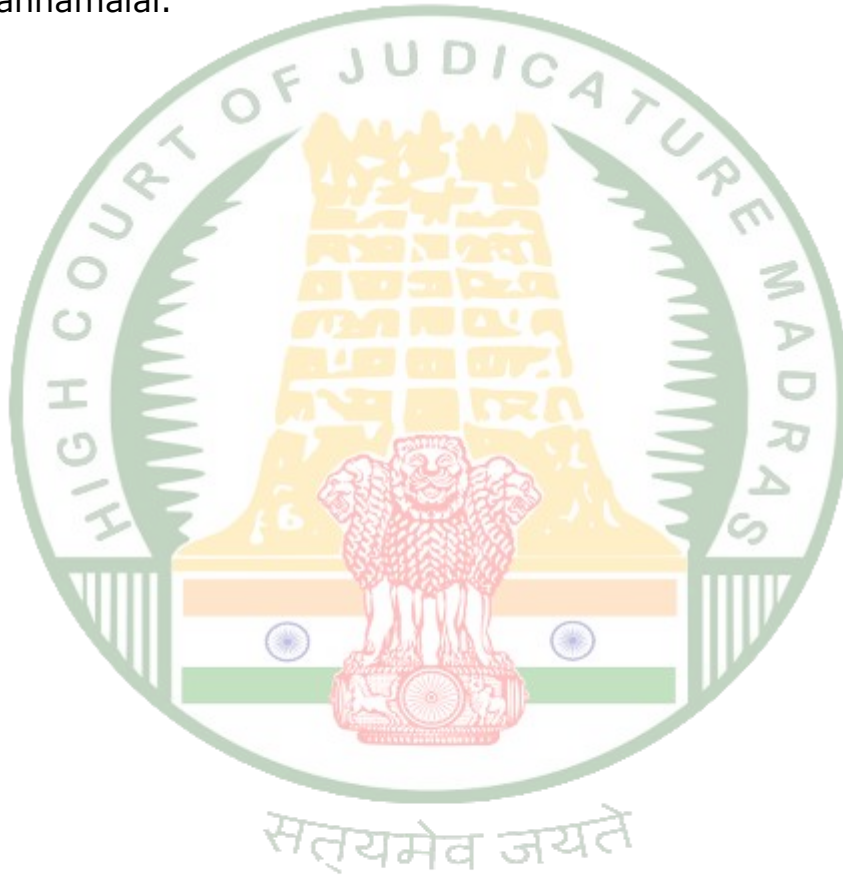
8.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.02.2018

Index :: Yes/No
gsa

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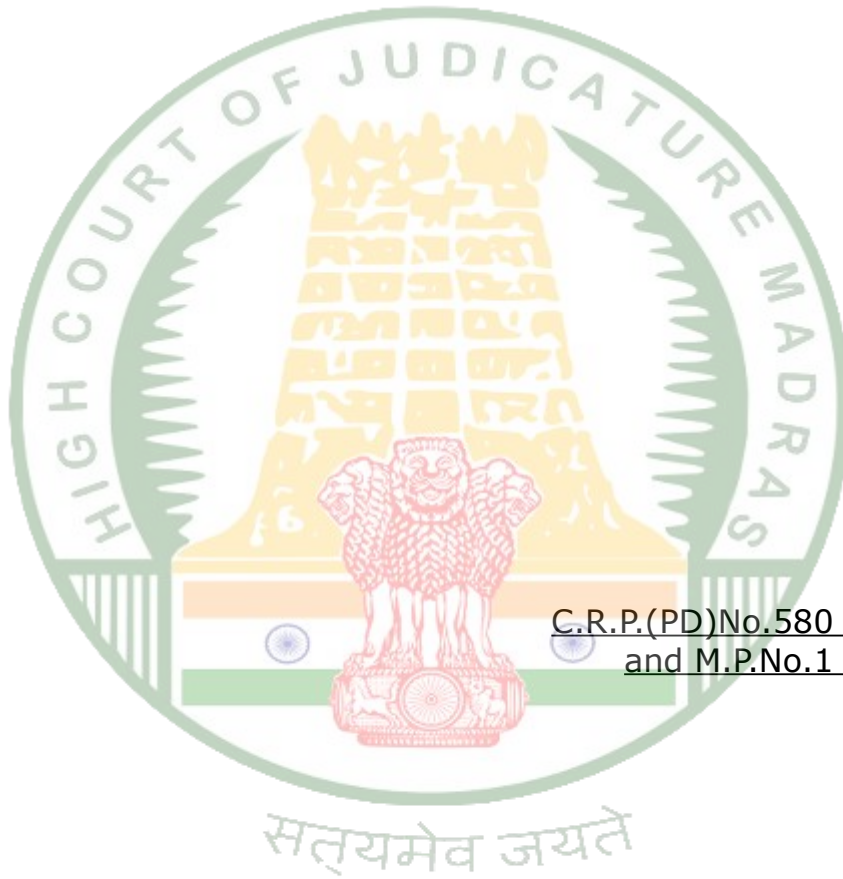
The Principal District Munsif
cum Judicial Magistrate,
Thiruvannamalai.



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V.M.VELUMANI,J.

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