

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.757 of 2015
and M.P.No.1 of 2015

U.Ramanna

..Petitioner

Vs.

Savithramma

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 17.09.2014 made in I.A.No.3 of 2014 in O.S.No.199 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Denkanikottai.

For Petitioner : Mr.G.Ilamurugu

for Mr.P.Mani

For Respondent : Mr.R.Jayaprakash

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 17.09.2014 made in I.A.No.3 of 2014 in O.S.No.199 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Denkanikottai.

2. The petitioner is defendant and respondent is plaintiff in O.S.No.199 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Denkanikottai. The respondent filed said suit for declaration of title and injunction. The petitioner filed written statement on 28.01.2008 and is contesting the suit. The respondent filed I.A.No.3 of 2014 to amend the plaint to substitute S.No.11/1B instead of S.No.11/1A and to include one paragraph stating that her father after filing of the suit executed a gift deed dated 16.04.2008 and handed over the suit property to her.

3. The petitioner filed counter affidavit and opposed the said application and contended that by amendment sought for, the respondent is introducing a new cause of action. The amendment sought for is with regard to the subsequent gift deed dated 16.04.2008 executed by the respondent's father after filing of the suit. The cause of action for the suit is based on the earlier gift deed dated 11.05.2007. The petitioner further contended that the respondent has already filed application for withdrawal of suit under Order 23 Rule 1 of C.P.C. with liberty to file a fresh suit on the same cause of action and the said application is pending. Suppressing the

same, the petitioner has come out with the present application, which is not maintainable.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and the fact that the properties mentioned in both the gift deeds are one and the same, allowed the application.

5. Against the said order dated 17.09.2014 made in I.A.No.3 of 2014 in O.S.No.199 of 2007, the present Civil Revision Petition is filed by the petitioner/defendant.

6. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7. From the materials available on record, it is seen that amendment sought for according to the respondent is survey number mentioned in the schedule to the suit property has to be corrected as 11/1B instead of 11/1A and to incorporate the subsequent gift deed dated 16.04.2008 executed by her father in the schedule to the suit property. From the impugned order of the

learned Judge, it is seen that the learned Judge has held that the property is one and the same in both the gift deeds dated 11.05.2007 and 16.04.2008. In a suit for declaration of title, correct description of the property is necessary.

8. The learned counsel for the petitioner filed copies of the gift deeds dated 11.05.2007 and 16.04.2008 and contended that the properties mentioned in the gift deeds are different. In the first gift deed dated 11.05.2007, based on which she filed the suit, the property is mentioned as S.No.11/1A, whereas in the subsequent gift deed dated 16.04.2008, the property is mentioned as S.No.11/1B. The respondent is not entitled to seek amendment to substitute the property based on the subsequent gift deed executed in her favour, subsequent to filing of the suit. On perusal of two gift deeds dated 11.05.2007 and 16.04.2008 filed in the additional typed set of papers by the learned counsel for the petitioner, it is clear that the properties in both the gift deeds are different. The learned Judge erred in holding that the properties in both the gift deeds are one and the same. The respondent, by present amendment is trying to introduce a new cause of action and a new

case. Therefore, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside.

9. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

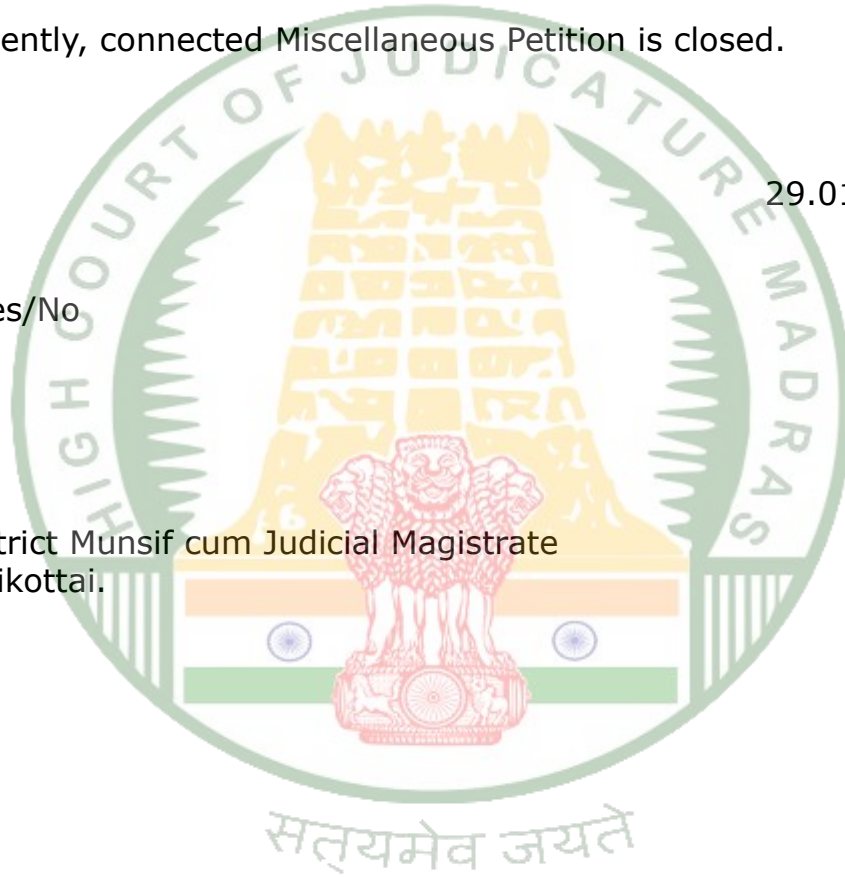
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Index:Yes/No

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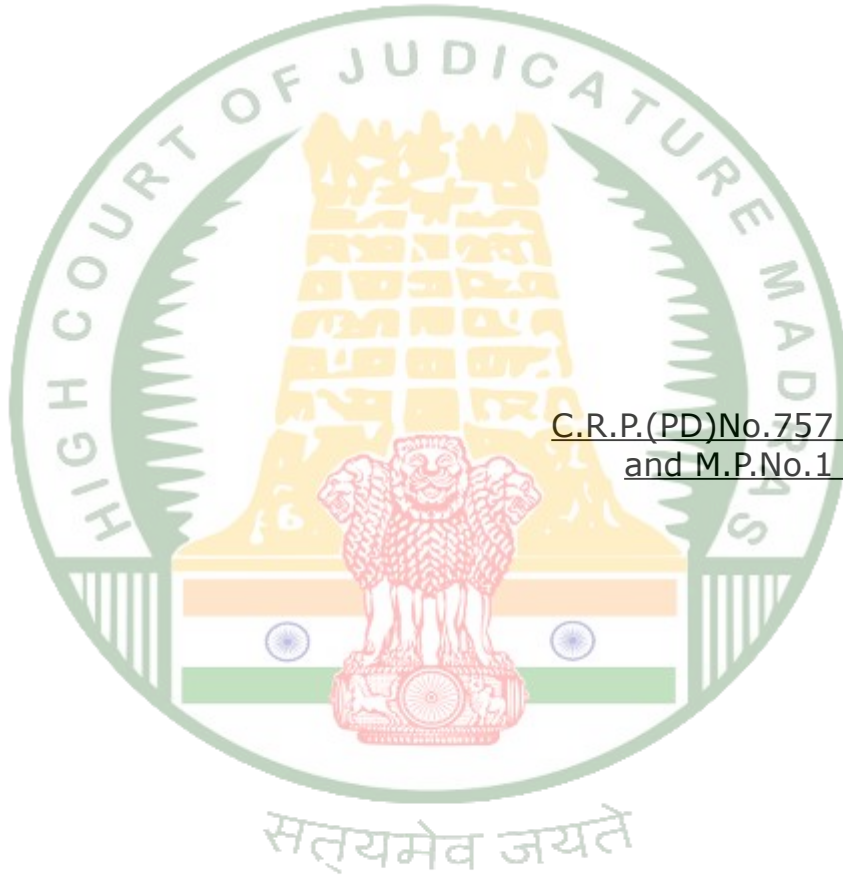
The District Munsif cum Judicial Magistrate
Denkanikottai.



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V.M.VELUMANI,J.

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