

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

C.R.P(PD) Nos.751 & 951 of 2018
and
C.M.P.Nos.3814 & 5099 of 2018

Azhagu Sambasivam

..(Petitioner in both C.R.Ps)

Vs

1.Mr.Azhagu Bangaru

2.Mr.HemDev Ramkrishna

Mrs.Krishnaveni Ammal(died)

3.Mrs.Lakshmi

4.Mrs.Lalitha

5.Mrs.Sasikala

6.Mrs.Revathy

..(Respondents in both C.R.Ps)

Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 14.11.2017 passed in I.A.No.51 of 2017 in I.A.No.24 of 2014 & I.A.No.50 of 2017 in O.S.No.31 of 2005 on the file of I Additional District & Sessions Judge, Cuddalore.

For Petitioner

in both C.R.Ps

For RR1 & R2

in both C.R.Ps

For RR3 to R6

in both C.R.Ps

:C/V filed by Mr.P.Mathivanan

: Mr.T.S.Baskaran

: No appearance

COMMON ORDER

Challenging the order allowing the amendment under Order 6 Rule 17 CPC, the present revisions have been filed by the petitioner herein who was the defendant in the suit for partition.

2. The learned counsel for the petitioner submitted that the amendment application was filed very belatedly. According to him, the written statement was filed long back, wherein he had pointed out the misdescription of the suit schedule properties and thereafter during the course of trial also, these discrepancies were pointed out. The respondent herein, had not taken diligent steps to file the application for amendment in time. The learned counsel further submitted that by allowing the amendment, the petitioner has brought in a fresh cause of action and as such, he would be entitled to file his additional written statement, since the amendment would effectively mould the preliminary decree also.

3. The learned counsel for the respondents, on the other hand, submitted that the nature of the amendment, he had sought for was only for deleting some of the items in the suit schedule property, which were not the joint family properties and the other rectification he had requested for was the change in Survey Numbers and extent of the lands. The learned counsel submitted that all the errors were only typographical errors and that since the suit property consists of numerous items of property covered

under schedules, the error had occurred. In support of his contention, the learned counsel for the petitioner relied upon two decision of this Court reported in **2015 SCC Online Madras 9807 (Swamyammal Vs. Ramalingam and others)** and **2008 (6) CTC 197 (Alamelu and 4 others Vs. Kunjalam and 4 others)**

4. I have given my careful consideration to the submissions made by the respective counsel.

5. As pointed out by the learned counsel for the petitioner, it is no doubt true that the application for amendment has been made at a belated stage when the preliminary decree had been passed and the final decree proceedings had already been initiated. In the written statement filed by the petitioner herein, he had stated therein that the some of the properties have been unnecessarily included in the suit schedule which were not joint family properties. Likewise, even during cross examination, the petitioner herein had put specific suggestions indicating that the properties in item Nos. 5,8 of 'A' Schedule property, 1 of 'B' Schedule property, 3,4,6 and 9 of 'C' Schedule property have been unnecessarily included in the suit schedule. As such, it cannot be said that the respondent herein had approached the Court diligently. Nevertheless, it is not in dispute that the amendment of deletion of some of the properties which have been sought for are not the joint family properties. As such, it would be pertinent and necessary for removal of those items of the

properties which need not undergo partition. Likewise by wrong description of Survey numbers and the extent of some of the items of the suit properties, consequently, final decree would become inexecutable in view of those errors and therefore these rectifications **also** are equally pertinent and necessary. The reason stated by the respondent before the trial Court for the amendment is that the rectification by way of substitution survey number and extent of land was a typographical error. As such, the Court below was justified in taking cognizance of this reasoning and allowing the amendment. Even otherwise, for all practical purposes, the amendment would be necessary and therefore I do not find infirmity on the part of the trial Court in allowing the said amendment.

6. Second objection raised by the learned counsel for the petitioner is that if such an amendment is permitted, he must be given an opportunity to file an additional written statement since it give rise to a fresh cause of action to the partition suit. In support of his submission, he would also rely upon two decisions of this Court.

7. I am not in agreement with such a submission made for the reason, that the amendments are only in the form of rectification of Survey Numbers and extent of lands and deletion of some of the properties. These amendments cannot be termed to give rise to a fresh cause of action.

Likewise when some of the items were deleted from the suit schedule properties, that also would not deem to change the nature of the suit. The

decision relied upon by the learned counsel for the petitioner reported in **2015 SCC Online Madras 9807 (Swamyammal Vs. Ramalingam and others)**, is a case where the amendments sought for therein were allowed and liberty was granted to file additional written statement. In the decision relied upon by the learned counsel for the petitioner, the amendment sought for was with regard to the quantum of the shares in a suit for partition. For such an amendment, it can be said that the amendment would give rise a fresh cause of action as well as would change the nature of the suit. As such, in those given set of facts, the defendants therein would definitely be entitled to putforth their objection. Whereas in the instant case, neither there is a fresh cause of action nor there is a change in the nature of the suit.

8. Again in the decision reported in **2008 (6) CTC 197 (Alamelu and 4 others Vs. Kunjalam and 4 others)**, the amendment was for correction of the boundaries of the property therein which also gives rise to a fresh cause of action and may change the nature of the suit. As such both the decisions may not be of any help to the petitioner herein.

9. In the light of the above observations, I do not find any reason to interfere with the order of the trial Court passed in I.A.No.51 of 2017 in I.A.No.24 of 2014 & I.A.No.50 of 2017 in O.S.No.31 of 2005.

10. Accordingly, Civil Revision Petitions stand dismissed.

Consequently, connected Miscellaneous Petitions are closed. No costs.

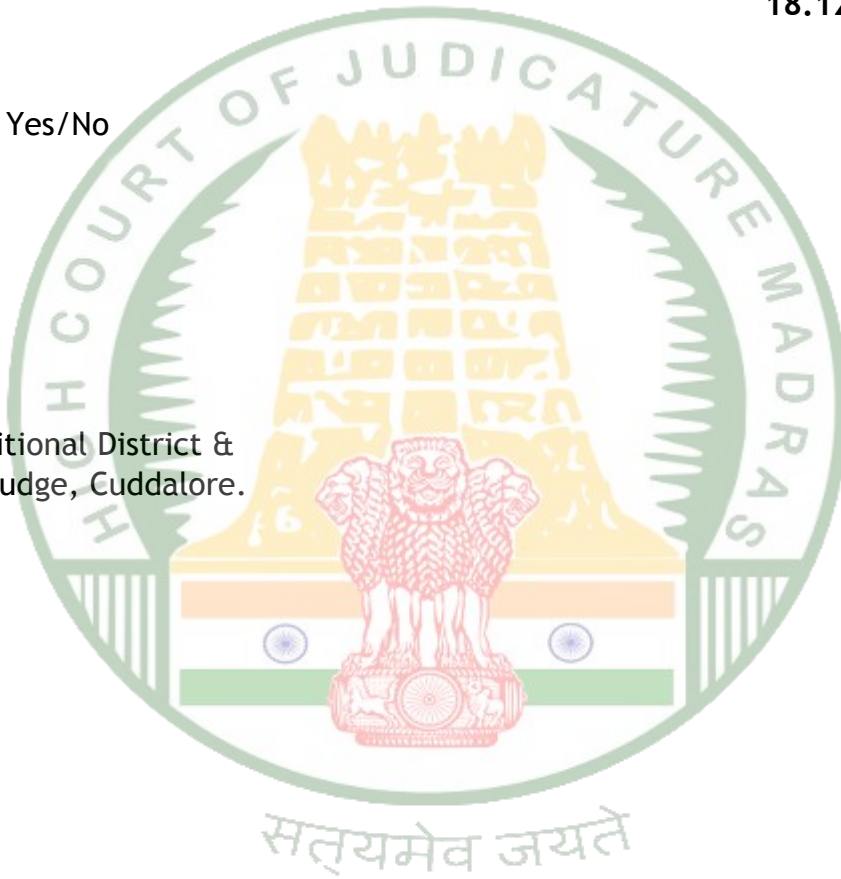
18.12.2018

Index : Yes/No

dh

To

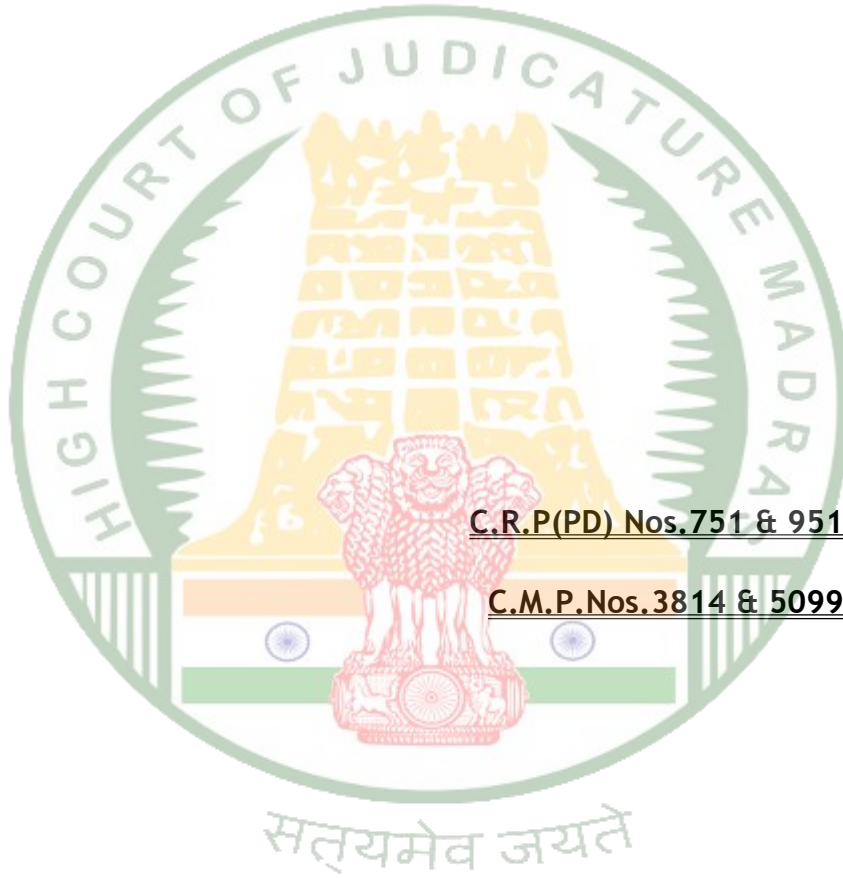
The I Additional District &
Sessions Judge, Cuddalore.



WEB COPY

M.S. RAMESH.J.,

dh



C.R.P(PD) Nos.751 & 951 of 2018
and
C.M.P.Nos.3814 & 5099 of 2018

WEB COPY

18.12.2018