

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P. (NPD) No.3027 of 2010

V.Rajkumar

.. Petitioner

Versus

A. Mani Senthil
No.36, Perumal sannathi Street,
Nagapattinam Town.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the amendment made in Decree of Memo O.S.No.7 of 2005 as per memo dated 23.04.2010 on the file of District Court, Nagapattinam.

For Petitioner : Mr.M.Muthappan

For Respondent : Ms.J.Jothi

ORDER

This Civil Revision Petition arises against the post decree amendment granted by the learned District Judge, Nagapattinam in O.S.No. 7 of 2005, in and by which, the learned Judge, on a Memo, has included the following words, "on the charge of the suit property". Aggrieved by this inclusion, the defendant has filed the present Civil Revision Petition.

2. The facts of the case read as follows:

(i) The respondent herein filed a suit in O.S.No. 7 Of 2005 on the file of the learned District Judge, Nagapattinam, for recovery of a sum of Rs. 12,00,170/- which was paid by him as advance for purchase of the property belonging to the revision petitioner. However, the sale did not take place and therefore, a suit came to be filed. Ultimately, the learned District Judge, by Judgment and Decree dated 27.11.2009, directed the revision petitioner herein to pay the amount with interest at the rate of 6% per annum from the date of plaint till the date of realization.

(ii) Thereafter, the respondent had filed an Memo dated 23.04.2010, seeking to include the words "on the charge of suit property". The revision petitioner, who took notice, had made an endorsement that he is strongly opposing the same, as the Judgment does not make any reference to the charge.

(iii) However, the learned District Judge vide order dated 23.04.2010, had allowed the Memo and permitted the amendment by stating that there was no valid objection. Aggrieved by this order, the revision petitioner has filed the present petition.

3. Heard Mr.M.Muthappan, learned counsel for the petitioner and Ms.J.Jothi, learned counsel appearing for the respondent.

4. The only point that arises for consideration is as to whether the amendment that is now sought for conforms to the provision of Section 152 of the Code of Civil Procedure (herein after referred to as "the code").

5. Section 152 of the code reads as follows:

" Amendment of judgments, decrees or orders? Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

6. A mere reading of the Judgment dated 27.11.2009 clearly shows that the learned Judge did not intend to create a charge in respect of the decree amount and it is for this reason the original decree had only referred to the amount payable with interest. Therefore, the amendment (i.e) inclusion of the words "on the charge of suit property" now sought for, will not come within the ambit of Section 152 either as clerical or arithmetical mistake or any accidental slip or omission as there was no intention to create charge. It is inconvincible as to how the learned Judge accepted the Memo especially when the objection to the said Memo was on the ground that the Judgment did not reflect the charge.

7. Therefore, the order of the learned District Judge suffers from a total non-application of mind and the learned Judge has allowed the memo on the ground that there is no valid objection totally ignoring the objection endorsed by the counsel for petitioner on the memo. Hence, the order of the learned District Judge is liable to be set aside.

8. In the result, the Civil Revision Petition is allowed and the order of the learned District Judge, Napattinam in Memo dated 23.04.2010 is set aside and the Original Decree as granted on 27.11.2009 remains unchanged. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Vsn

To

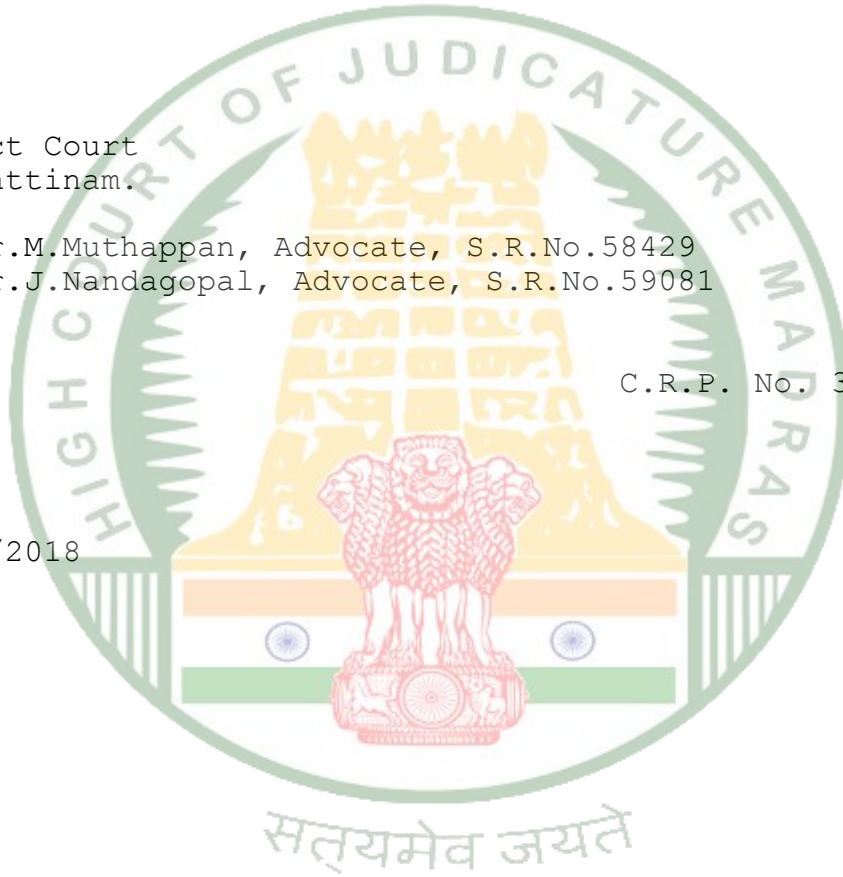
District Court
Nagapattinam.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.58429
+1cc to Mr.J.Nandagopal, Advocate, S.R.No.59081

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PP(CO)

rrs 14/09/2018



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