

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

C.R.P (NPD) No.4503 of 2013
& M.P.No.1 of 2013

1.Vengatachalam
2.Kannammal

.. Petitioners

Vs.

1.Santhadevi
2.Manjuladevi
3.Balasubramani
4.Shanmugam
5.Arumugham
6.Chinnasamy
7.Nallasamy
8.Chinnarasy
9.Arumugham
10.Periasamy
11.Karuppusamy
12.Nachimuthy
13.Subbayammal
14.V.P.Velusamy
15.Rajalakshmi
16.Selvakumar @ Chinnakannal
Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal order dated 22.10.2013 made in I.A.No.827

of 2013 in O.S.No.178 of 2011 on the file of the Principal District Court, Erode.

For Petitioners : Mr.P.Kaviri Nadan for
Mr.N.Manokaran

For Respondents : Mr.Elamurugan for Ms.P.R.Ramadevi
for R1 to R3
R4 to R16 not necessary parties

ORDER

The instant civil revision petition arises out of an amendment application in a partition suit on the file of Principal District Judge's Court, Erode, which shall hereinafter be referred to as 'trial Court' for the sake of convenience and clarity. The partition suit is O.S.No.178 of 2011.

2. The Court is informed that the first defendant is the father of the first plaintiff and the second defendant. It is also submitted that this is a partition suit, as amongst co-parceners.

3. In the suit there are two items of properties.

4. Plaintiffs in the suit, took out an application under Order VI Rule 17 of 'Civil Procedure Code, 1908' (hereinafter referred to as 'CPC' for brevity)

seeking an amendment in item 1 of the plaint schedule property. The application for amendment under Order VI Rule 17 CPC is predicated on the ground that a typographical error has crept in and therefore, it has become necessary to carry out the amendment. This application was resisted by the defendants in the suit on two grounds. One ground is that this is a second amendment application. Other ground is that the application has been filed at a very advanced stage, when the trial is over and the suit is listed for arguments.

5. In the normal circumstances, an application for amendment under Order VI Rule 17 of CPC, at this advanced stage of the suit, may be viewed differently and the conclusion may also be altogether different. However, this being a partition suit as amongst coparceners where there are no plaintiffs and no defendants, the amendment application is viewed in this perspective. To be noted, in a partition suit, there are no plaintiffs and no defendants. This is the legal theory in a partition suit. Under such circumstances, considering the basis on which Order VI Rule 17 of CPC application has been filed i.e., that a typographical error has crept in qua the description of one of the two items of plaint schedule properties, it appears to the mind of this Court that no serious prejudice will be caused, if the amendment is allowed.

6. The learned District Judge has also held that no prejudice would be caused and he has also followed the principle that in suits of this nature,

Court in its discretion can permit amendment at any stage of the proceedings.

7. Learned counsel for the revision petitioner submits that the suit is being delayed and that this Order VI Rule 17 of CPC petition itself is an attempt to procrastinate the matter.

8. I have heard both counsel and perused the order of the learned District Judge, which is being sought to be revised.

9. I find that there is no infirmity in the order calling for interference by this Court. However, in the light of this being a partition suit and in the light of the plea before this Court that the suit is being delayed, it would serve the ends of justice to direct the learned District Judge i.e., Principal District Judge, Erode to dispose of the suit within six months from today.

10. The Court is informed that amendments have already been carried out. Therefore, there will be no impediment for the trial Court to proceed with the suit.

11. In the light of the narrative supra, there is no ground to interfere

with the order that is sought to be revised. Civil Revision Petition is dismissed, however with the direction qua time frame to the District Court to dispose of the suit as set out supra. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

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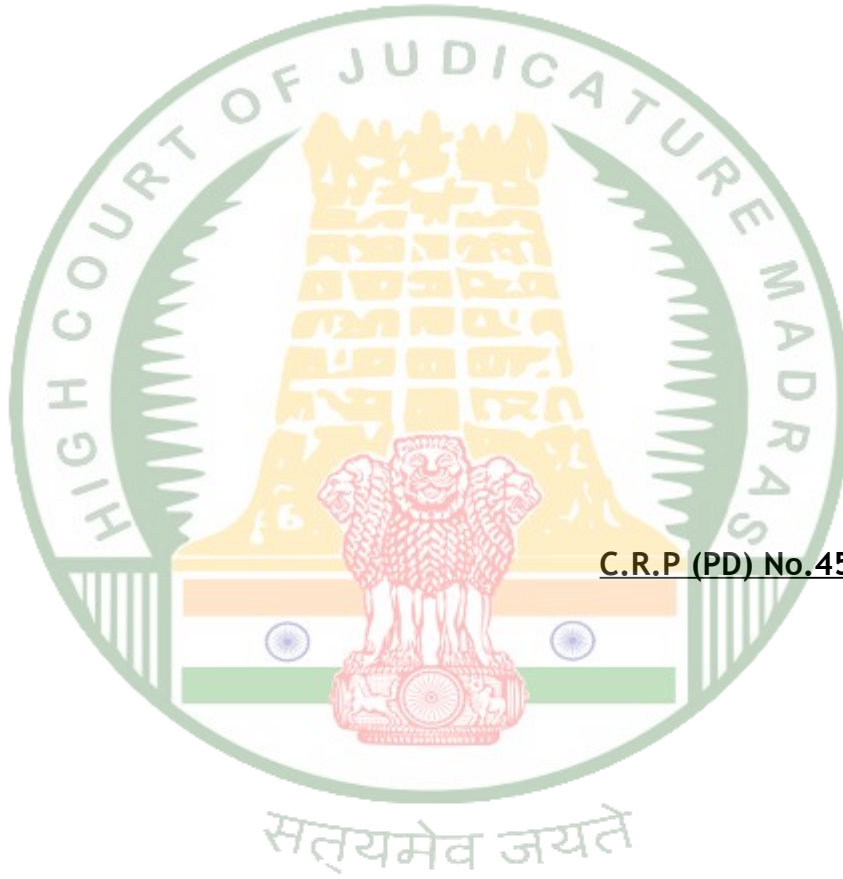
The Principal District Court, Erode.



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M.SUNDAR, J.,

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