

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.07.2019
Pronounced On	09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.1810 of 2015
and
M.P.No.1 of 2015

Ponnusamy (died)
Settu @ Krishnasamy

... Petitioner

vs.

Arumugam(Died)

1.Nallappan
2.Sivakumar

... Respondents

PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.1268 of 2014 in O.S.No.314 of 2007 on the file of District Munsif Court, Mettur dated 20.02.2015.

For Petitioner : Mr.P.Valliappan

For R1 : M/s.D.Shivakumaran

ORDER

The petitioner is aggrieved by the impugned fair and decretal order dated 20.2.2015 passed by the District Munsif Court , Mettur in I.A.No. 1268 of 2014 in O.S.No.314 of 2007.

2. By the impugned order, the court has dismissed I.A.No.1268 of 2014 in O.S.No. 314 of 2007 filed by the petitioner to amend the plaint Under Order VI Rule 17 of the Civil Procedure Code.

3. The petitioner was impleaded as the legal representative of the deceased plaintiff in the above suit, pursuant to a “Will” dated 27.02.2014 that was purportedly executed by the deceased plaintiff bequeathing a smaller extent of the suit schedule property in favour of the petitioner. After executing the aforesaid will, the plaintiff viz., Ponnusamy died on 9.6.2014.

4. The petitioner had filed I.A.No.1268 of 2014 in O.S.No.314 of 2007 before the District Munsif Court, Mettur to amend the plaint. The said application was dismissed. Challenging the dismissal order, the petitioner has filed the present Civil Revision Petition.

5. The application was filed to restrict the remedy to a smaller extent of the suit schedule property and for a declaration that the petitioner is the owner of the aforesaid lesser extent of the suit schedule property.

6. The respondents who are the defendants in the suit contested the application and stated that the petitioner's father who was the 1st defendant and petitioner's uncle deceased (plaintiff Ponnusamy) had colluded and filed the above suit for a permanent injunction even though the 2nd respondent was the original allottee/assignee of the land and the 1st respondent was in possession of the said land.

7. Further it was stated that the application for amendment of the plaint seeking for a declaration that the petitioner was the owner of the lesser extent land out of the suit schedule property was intended to alter the course of the case and was barred by limitation in terms of article 58 of the Limitation Act.

8. It is stated that the necessity for filing the application to amend the plaint arose on account of subsequent event after the death of the original

plaintiff, Ponnusamy who died and on account of the “will” dated 27.2.2014 executed by the deceased plaintiff Ponnusamy in favour of the petitioner. Objection was raised by the respondents in the said application for impleading the petitioner as the legal representative of the deceased plaintiff, Ponnusamy.

9. It was submitted that the proposed amendment was an innocuous amendment and no prejudice would have been caused to the respondents (contesting defendants). By seeking a declaratory relief, the petitioner was avoiding multiplicity of the proceedings.

10. Under the circumstances, the petitioner was constrained to file I.A.Nos. 1267 and 1268 of 2014 after the trial was completed and after the petitioner was impleaded and allowed to pursue with the suit in place of the deceased plaintiff Ponnusamy. While, the court allowed I.A.No. 1267 of 2014, it has rejected I.A.No.1268 of 2014 vide the impugned order.

11. It was submitted that the rejection of the application by the lower court for amending the plaint on the ground that the petitioner was asking for a new relief in respect of an altogether new property and therefore

amendment cannot be permitted is in correct. The observation that it is open for the petitioner to file a new suit is an erroneous assumption on facts as the proposed amendment merely restricted the relief for a lesser extent of the property from and out of the suit schedule property that was included in the plaint filed by the deceased plaintiff, Ponnusamy during his life time.

12. The necessity for a declaratory relief arises on account of the objection to the rights of the petitioner over the property when he filed the application to be impleaded as the legal representative of the deceased plaintiff Ponnusamy.

13. It was submitted that the courts are not powerless to allow amendment to the plaint after the commencement of the trial if subsequent course of events justified such amendment.

14. Learned Counsel for the petitioner relied on the following decisions of the Court:-

" i. **Sampath Kumar vs Ayyakannu and Another**, 2002 (4)
CTC 189 (SC).

ii. **Anathula Sudhakar vs Buchi Reddy (Dead) by L.Rs and Ors**, AIR 2008 SC 2033.

iii. **A.Philoman Raj vs S.Kunna Gounder and 2 Others**, 2009 (4) CTC 580 (Mad).

iv. **Venkatachalam and Another vs Nallathambi**, 2013 (4) CTC 45 (Mad).

v. **Chitra vs Kannan**, 2015 (1) CTC 820 (Mad)."

15. The Learned counsel for the respondents submits that the order of the court is well reasoned and requires no interference in the hands of this court.

16. It was further submitted that the proposed amendment for a declaratory relief was barred by limitation and if the deceased plaintiff Ponnusamy himself could have not asked for such a relief himself during his life time how can the petitioner who is a legal representative stepping into the shoes of the deceased plaintiff ask for such relief. It was submitted that the prayer for amendment to include the relief for a declaration that the petitioner was the owner of the suit property and was barred under Article 58 of the Constitution of India.

17. Learned counsel for the respondents also relied upon the following decisions of the Apex court:-

- i. **Ashutosh Chaturvedi vs Prano Devi alias Parant Devi and Ors**, (2008) 15 SCC 610.
- ii. **Rajkumar Gurawara (Dead) Through Lrs vs S.K.Sarwagi and Company Private Ltd and Another**, (2008) 14 SCC 364.
- iii. **Ajendraprasadji N. Pandey and Another vs Swami Keshavprakeshdasji N. and Another**, (2006) 12 SCC 1.
- iv. **L.C.Hanumanthappa (Since Dead) rep. by his legal representatives vs H.B.Shivakumar**, (2016) 1 SCC 332.
- v. **Revajeetu Builders and Developers vs Narayanaswamy and Sons and Others**, (2009) 10 SCC 84.
- vi. **T.N.Alloy Foundry Co.Ltd vs T.N.Electricity Board and Others**, (2004) 3 SCC 392.
- vii. **Vijendra Kumar Goel vs Kusum Bhuwania Smt**, 1997 (11) SCC 457.
- viii. **J Samuel & Others vs Gattu Mahesh & Ors**, 2012 (2) SCC 300.

18. I have considered the impugned order passed by the court. From the records, it appears that after the trial was over and the arguments were

advanced on behalf of the parties to the suit on 10.2.2014. However, before the judgment could be pronounced, the original plaintiff Ponnusamy died on 9.6.2014 after purportedly executing a “will” in favour of the petitioner on 27.2.2014 bequeathing a portion of the suit schedule property in favour of the petitioner. Under the circumstances strings of application came to be filed by the petitioner.

19. Earlier I.A.No.240 of 2014 was filed. It was dismissed on 8.4.2014. Thereafter, I.A.No.838 of 2014 was filed to implead the petitioner as the legal representative of the deceased plaintiff, Ponnusamy as class 2 heir. That was allowed on 9.9.2014. Thereafter, the petitioner filed I.A Nos. 1267 & 1268 of 2014 to substitute the name of the petitioner in place of the deceased plaintiff and to amend the plaint respectively.

20. I.A No.1267 of 2014 was allowed while I.A. No.1268 of 2014 was dismissed on the ground that the petitioner was altering the course of the proceeding with a new property in suit schedule to the plaint and by seeking for a declaratory relief.

21. During the course of the hearing, it was mentioned that the observation of the learned District Munsif that the petitioner was seeking relief in respect of a new property is misconceived. It was further submitted that reference to S.A.No. 1451 of 2008 by the respondent was unnecessary as the petitioner is not a party to the said proceeding.

22. Short point that arises for consideration in the present Civil Revision Petition is whether the petitioner was entitled to alter the suit schedule by restricting it to a lesser extent from and out of the original schedule or was substituting it with a altogether new property which was alien to the suit schedule in the plaint as was originally filed? Secondly, whether by seeking for a declaratory relief, whether the petitioner was making of the new case and therefore not entitled for amendment to the plaint?

23. It is categorically submitted by the petitioner that the amendment merely restricts the extent of the suit schedule property out of the suit schedule property from the original plaint. I have compared the description of the property in the original plaint and in the application filed for amendment of the suit schedule, which read as under:-

<i>Plaint schedule properties</i>	<i>Amend plaint schedule properties</i>
<u>I. Survey No. 10 3 A1</u> (In Hec. 1.57.0 = 3.88 Acre) After the government acquisition, 1.25 Acre throughout <u>boundaries:-</u> West : Government acquisition Land South: Arumugam's land East : Chinnaiya Gounder's land North: Canal	
<u>II. Survey No. 100 3 A 3A</u> (In Hec. 1.75.5 = 4.32 Acre) 2.90 Acres	Patta No.1077 <u>New Servey No.100/3A/3A1</u> (Hec 0.69.5 = 1.72 Acre) 1.72 Acre throughout
<u>Boundaries:-</u> East : Chinnaiya Gounder's land West : Backward land North: Angappan's land South: Arumugam's land	<u>Boundaries:-</u> East : Ayyathurai's s/o. Chinnaiya Gounder land West : Thiyaki Viswanathathas Nagar North: Nangavalli Main Road South: Arumugam's land

24. Prima facie the description given in the suit plaint and that in the application for proposed amendment to the suit schedule are not at variance. The petitioner has merely restricted the extent of the property.

25. Therefore, rejection of the application appears to be incorrect. However, this cannot be determined on a cursory look at the 2 schedules as the petitioner has claimed that the amended schedule is out of the suit schedule.

26. The court may therefore allow the amendment to the suit schedule by including the proposed amendment to the suit schedule schedule B without deleting the original suit schedule. The original suit schedule property shall be referred to as A schedule. In case, the court comes to the conclusion that the amended B schedule forms part of the A Schedule (original schedule), it court may decide the issue finally.

27. If there is no alteration in the suit schedule property barring a restriction to the extent of the schedule to a smaller extent, there is no prejudice to the respondents. Therefore, to that extent amendment to the

plaint can be allowed as the petitioner was restricting the relief to a smaller extent of the property out of total extent of property suit that was originally filed.

30. The 2nd question to be answered is whether by seeking a declaratory relief in the suit in the light of purported “will” dated 27.2.2014 executed by the original plaintiff who deceased would in any manner prejudice the interest of the respondents.

31. The Hon’ble Supreme Court in **Sampath Kumar Vs. Ayyakannu and another**, 2002 (4) CTC 189, held that the plaintiff can file a suit independently for the reliefs prayed for in the pending suit. Allowing the amendment actually curtails the multiplicity of legal proceedings and therefore pleadings can be amended at any stage of the proceeding for determination of the real question in controversy. Delay of 11 years in moving application for amendment to the pleading was allowed subject to payment of costs.

32. There the Court further held that interest of the defendants can be protected by directing that so far as the release of declaration of title and

recovery of possession sought for a concern prior in that regard shall be deemed to have been made on the date on which the application for amendment has been filed. In yet another decision of the Hon'ble Supreme Court in **Anthula Sudhakar vs P.Buchi Reddy (2008) 4 SCC 594** ; the court observed as under:-

Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

33. This court in **A Philoman Raj versus S Kunna Gounder 2009 (4) CTC**

580 dealt with the case where the plaintiff filed a suit for injunction. The

court held that the plaintiff can also file a subsequent suit for declaration following the decision of the Hon'ble Supreme Court in **Shiva Kumar Sharma vs. Santhosh Kumari** 2007 (8) SCC 600.

34. In **Venkatachalam Vs Nallathambi** 2013 (4) CTC (Mad), after referring to several decisions answered the substantial question of law by giving liberty to the plaintiff to file a comprehensive suit for declaration and recovery of possession of the property in the manner known to law.

35. A somewhat similar issue came up for consideration **Chitra Vs Kannan** 2015 (1) CTC 820 (Mad). The court held that the plaintiff can be allowed at any stage of the proceeding to amend the plaint and if the trial court comes to the conclusion that the question of title cannot be resolved with convenience, it can relegate the plaintiff to a more comprehensive suit for declaration and other relief. The court also answered the issue that Article 58 and 113 of the limitation that would not barred such amendment.

36. In ***L.C.Hanumanthappa (since deceased) Represented by his legal representatives vs. H.B.Shivakumar*** (2016) 1 SCC 332, wherein it was held that amendment can be allowed subject to plea of limitation. In ***J.Samuel and others vs. Gatta Mahesh and Others*** CDJ 2012 SC 041, the Court held that Court can allow delayed amendment by compensating the other side by awarding costs as entire object of the amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprise and that the parties had sufficient knowledge of other case. On facts the Court upheld the order of the Trial Court dismissing the application for amendment as the plaintiff was not negligent while filing the suit. In ***T.N.Alloy Foundar Co., Ltd., vs T.N.Electricity Board and others***, (2004) 3 SCC 392 it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it. The following decision in ***L.J.Leah and Co., Ltd., vs. Jardine Skinner and Co.***, AIR 1957 SC 357 : 1957 SCR 438, the court held that amendment was not foreign to the scope of the suit.

37. In *Rajvajeetu Builders and Developers vs. Narayanaswamy and Sons and Others*, (2009) 10 SCC 84, it was held that in *Ganga Bai's case* (supra), this Court has observed as under:-

“ The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court”.

38. The Hon'ble Court further observed as under:-

58. In *B. K. Narayana Pillai v. Parameshwaram Pillai & Another*²¹, a suit was filed by A for recovery of possession from B alleging that B was a licensee. In the written statement B contended that he was a lessee. After the trial began, he applied for amendment of the written statement by adding an alternative plea that in case B is held to be a licensee, the licence was irrevocable. The amendment was refused.

59. Setting aside the orders refusing amendment, this Court stated:

"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and the Supreme Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs.

Technicalities of law should not be permitted to hamper the courts in, the administration of justice between the parties. Amendments are 21 (2000) 1 SCC 712 allowed in the

pleadings to avoid uncalled for multiplicity of litigation."

60. In *Suraj Prakash Bhasin v. Raj Rani Bhasin & Others*²², this Court held that liberal principles which guide the exercise of discretion in allowing amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be readily granted while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment, that one distinct cause of action should not be substituted for another and that the subject-matter of the suit should not be changed by amendment. WHETHER AMENDMENT IS NECESSARY TO DECIDE REAL CONTROVERSY:

61. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.

NO PREJUDICE OR INJUSTICE TO OTHER PARTY:

62. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to 22 (1981) 3 SCC 652 other side. Ordinarily, if other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side.

63. The Courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.

39. In *Rajkumar Gurawara(Dead) Through Lrs vs S.K.Sarwagi and*

Company Private Ltd., and another, (2008) 14 SCC 364, the Hon'ble Supreme

Court held as follows:

"13. To put it clear, Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just.

Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the court to satisfy the conditions prescribed in the proviso”.

40. In para 18 the law was summarized as follows:

18. Further, it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation. The plaintiff not only failed to satisfy the conditions prescribed in proviso to Order 6 Rule 17 but even on merits his claim is liable to be rejected. All these relevant aspects have been duly considered by the High Court and rightly set aside the order dated 10-3-2004 of the Additional District Judge.

41. In **Ajendraprasadji N. Pandey and Another vs Swami**

Keshavprakeshdasji N. and Another, (2006) 12 SCC 1, the Court observed as follows in para Nos.34, 35 and 38 as under:-

It is seen that before the amendment of Order 6 Rule 17 by the Act 46 of 1999, the Court has taken a very wide view of

the power to amend the pleadings including even the plaint as could be seen from [H.J. Leach vs. Jardine Skinner](#), 1957 SCR 438 at 450 and [Gurdial Singh vs. Raj Kumar Aneja](#), AIR 2002 SC 1003.

By Act 46 of 1999, there was a sweeping amendment by which Rules 17 and 18 were wholly omitted so that an amendment itself was not permissible, although sometimes effort was made to rely on [Section 148](#) for extension of time for any purpose.

In the present case, the position is that the suit was filed on 06.09.2002 and the written statement was filed on 27.09.2002 and an application under Order VII Rule 11 was filed on 16.09.2002.

42. In [Ashutosh Chaturvedi vs Prano Devi alias Parant Devi and Ors](#), (2008) 15 SCC 610, the Court held that the only remedy which was, thus, available to the appellant might be to file a suit. It was held that “”but as the same itself being barred by limitation, we are of the opinion that the Court would not exercise its discretionary jurisdiction to allow the amendment of the plaint.

43. From a reading of the above decisions of the court, it is evident that the power of the court allow amendment to the plaint after the commencement of the trial is limited and has to be exercised with caution. If new case is sought to be introduced which alters the basic structure/feature of the suit and if such an amendment in the form of a new suit would be

barred by limitation, the court has no discretion to allow such amendment to the plaint. Even while allowing amendment, the courts have to see the prejudice that may be caused to the defendant and see if cost can be awarded

to mitigate the hardship that may be caused to the defendant while allowing the application for amendment of the plaint at a belated stage after commencement of trial.

44. The courts have also recognised that if the amendment can be allowed subject to preservation of the right of the defendant to raise the question of limitation, amendment to the plaint can be allowed even after the commencement of the trial.

45. In this case, originally the deceased plaintiff had filed the suit for a larger extent of land for a permanent injunction. The suit for permanent injunction pre-supposes possession with the plaintiff. The respondents, according to the deceased plaintiff Ponnusamy had attempted to trespass on the suit schedule property and it is under these circumstances the necessity arose for the deceased plaintiff to file the above suit for permanent injunction. There are averments in the plaint that was originally filed to show

that the deceased plaintiff claimed to be the owner of the property.

46. Therefore, the proposed amendment to the plaint by the petitioner as a legatee under a “will” cannot be said to have been barred by limitation. In fact, such an amendment to the plaint by the original plaintiff during his lifetime also cannot be said to be barred under law limitation. If the title is denied and under similar circumstances, the Court have also allowed the amendment and also allowed the plaintiff to file a comprehensive suit.

47. Under the circumstances, I am of the view that the order passed by the learned District Munsif , Mettur rejecting the application for amendment of the plaint based on the rights acquired by the petitioner pursuant to a “will” dated 27.2.2014 cannot be said to be barred by limitation. If the petitioner could file a separate suit, the petitioner can also ask for an amendment to the pleading in the pre-existing plaint as the respondents have denied the title for the suit schedule property to the petitioner. Further, the limitation is a mixed question of facts and law and has to be decided only in the trial.

48. Therefore, I am inclined to interfere with the impugned order passed by the learned District Munsif, Mettur by setting aside the same with

consequential relief.

49. Consequently, the relief sought for I.A.No.1268 of 2014 is allowed subject to payment of cost of Rs.5000/- to the respondents herein. Such cost shall be paid by depositing the same and to the credit of the above suit within a period of four weeks from the date of receipt of a copy of this order. The petitioner shall also file a copy of the amended plaint before the learned District Munsif, Mettur within such time, if it has not been already filed.

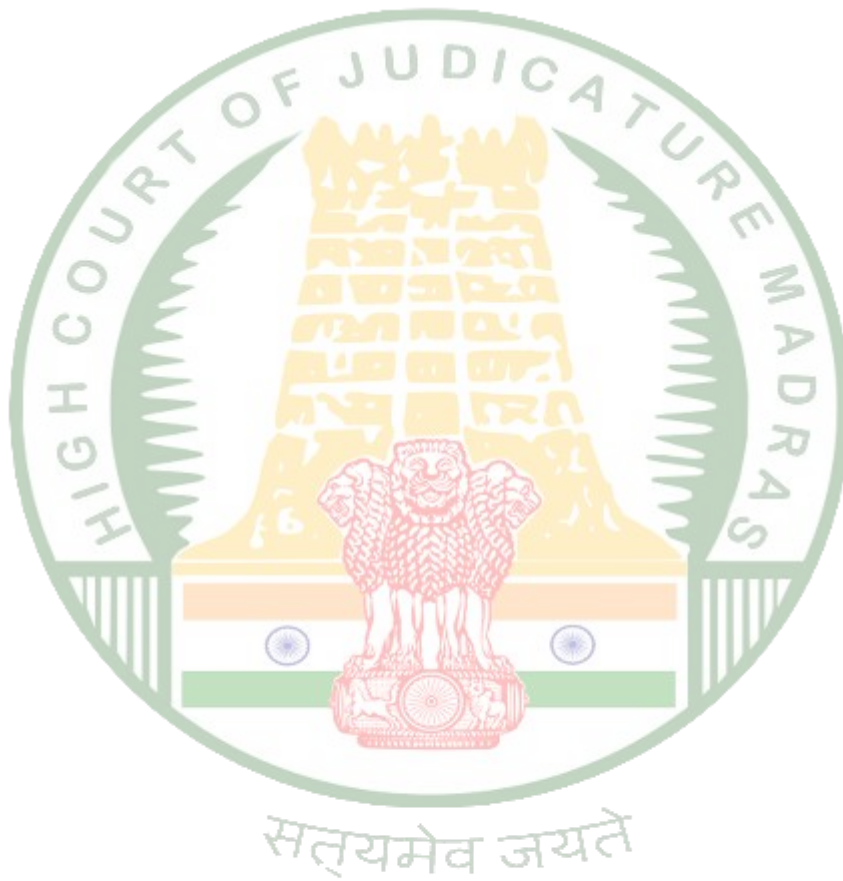
50. The respondents shall also file additional written statement, within a period of four weeks thereafter if advised. The court shall thereafter frame supplementary issues including the issues relating to the limitation and proceed with the trial and pass a final judgment and decree on merits within a period of nine months from the date of receipt of copy of this order. The respondents are at liberty to file a memo for payment out of the cost to be deposited by the petitioner as ordered herein.

51. The present civil revision petition stands allowed with the above observation. Consequently, connected miscellaneous petition is closed.

09.08.2019

Index :Yes/No

Internet :Yes/No
Speaking /Non Speaking Order
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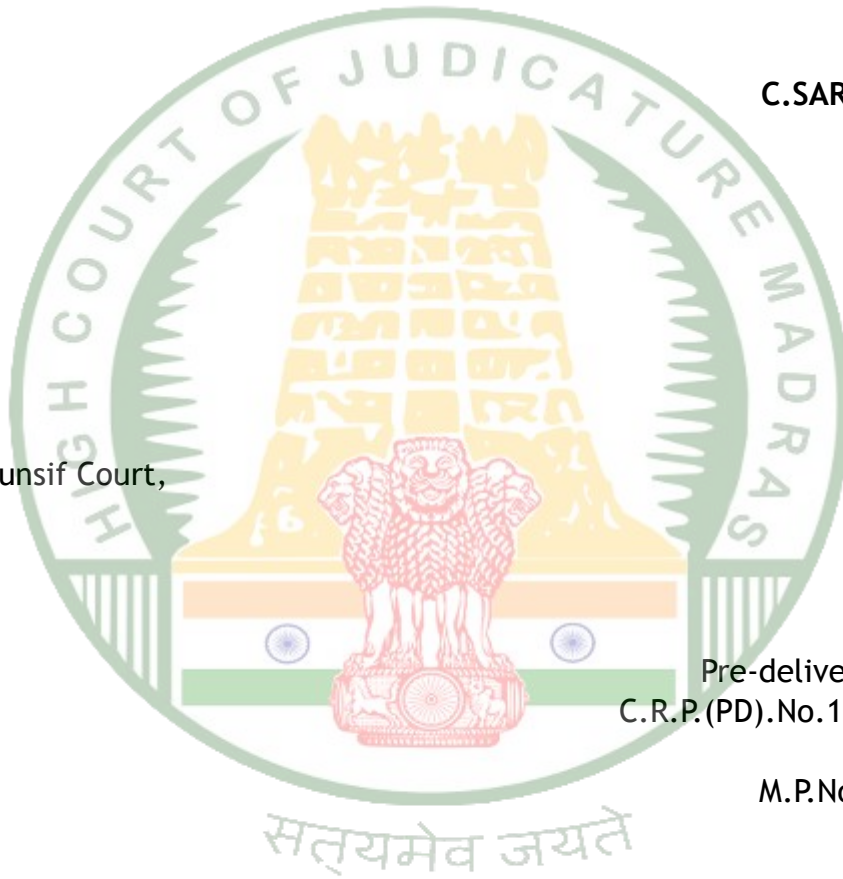
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C.SARAVANAN,J.

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To

District Munsif Court,
Mettur.



Pre-delivery order in
C.R.P.(PD).No.1810 of 2015
and
M.P.No.1 of 2015

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09.08.2019