

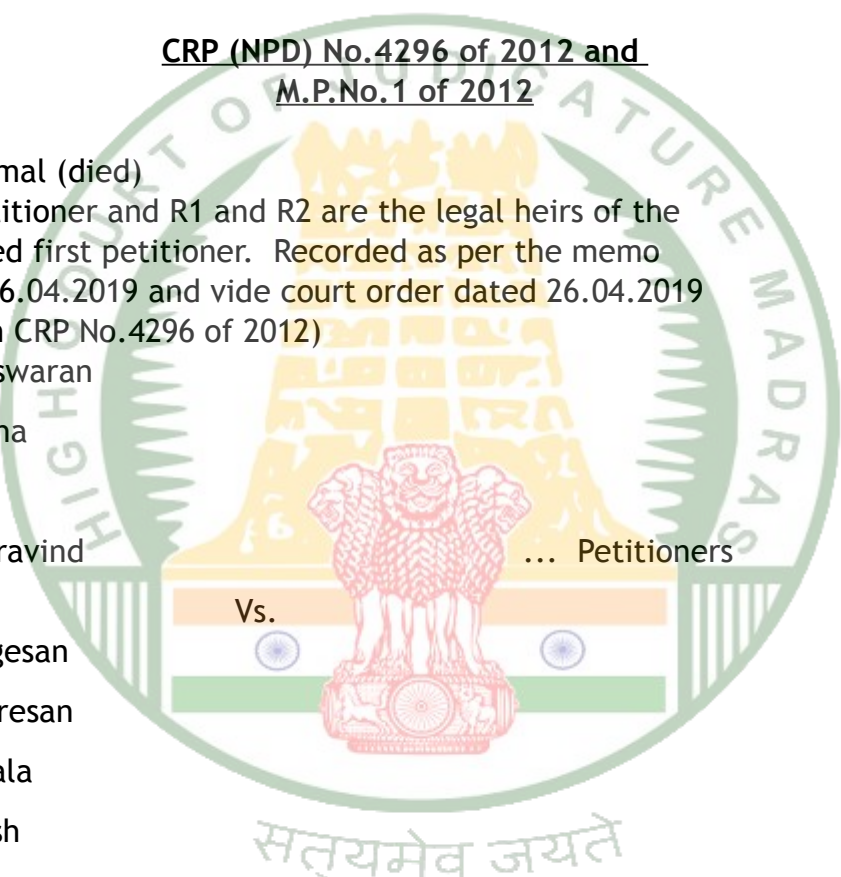
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.4296 of 2012 and  
M.P.No.1 of 2012

- 
1. Mariammal (died)  
(2nd petitioner and R1 and R2 are the legal heirs of the deceased first petitioner. Recorded as per the memo dated 26.04.2019 and vide court order dated 26.04.2019 made in CRP No.4296 of 2012)
2. A.Madeswaran
3. M.Geetha
4. Sujatha
5. Minor Aravind ... Petitioners
- Vs.
1. A.Murugesan
2. A.Kumaresan
3. K.Sasikala
4. K.Kailash
5. N.Dhanasekaran
6. M.Shanmugam
7. The Elavamalai Primary Cooperative Agricultural Bank Ltd,  
No.1161, rep. by its Secretary,  
Kalingarayanpudur, Erode District.
8. The Elkavamalai Cooperative Building Society Ltd., AA, 377, rep. by its Secretary,  
Kalingarayanpalayampudur,  
Bhavani Taluk, Erode District.

9. Bhavani Co-operative House Society Ltd.,  
No.AA.377, rep. by its Secretary,  
Valnapuram, Bhavani Taluk,  
Erode District.

10. Periyar Central Co-operative Bank Ltd.,  
Rep. by its Secretary, Bazaar Street,  
Bhavani Taluk, Erode District.

11. The Bhavani Co-operative Production  
and Sales Ltd.,  
No.K.954, rep. by the Secretary,  
Mettur Road, Bhavani Taluk, Erode District.

... Respondents

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code  
of Civil Procedure against the orders dated 26.07.2012 passed in I.A.No.278  
of 2012 in I.A.No.368 of 2010 in O.S.No.18 of 2007 by the I Additional  
District Judge, Erode.

For Petitioners

: Mr.T.R.Rajaraman

for Mr.R.Siddharth

For Respondents

: Mr.V.Kesavan (for R1)

R2 to R1 given up.

**ORDER**

The revision petitioners are the defendants in O.S.No.18 of 2007 on the file of the I Additional District Judge, Erode. The first respondent/ plaintiff filed the above suit for partition of the suit properties into 16 equal shares and to allot 5 such shares to him and also for directing the defendants 1 to 8 to pay a sum of Rs.3,12,500/- together with interest at the rate of 12% p.a. from the date of plaint till the date of realisation. The plaintiff further prayed for rendition of accounts by the defendants 1 and 8. The suit was decreed and a preliminary decree for partition was passed by the learned I Additional District Judge, Erode. Subsequently, the plaintiff filed a petition in I.A.No.368 of 2012 in O.S.No.18 of 2007 for passing of final decree. During the pendency of the said application, the plaintiff also filed a petition in I.A.No.278 of 2012 under Section 152 of the Code of Civil Procedure praying to amend the preliminary decree by substituting the Resurvey number of the first item of the suit property as 71/6 instead of R.S.No.73. The specific contention of the plaintiff is that by mistake, R.S.No. of the first item of the suit property was wrongly typed as 73 instead of 71/6 and therefore, the preliminary decree has got to be amended.

2. The first defendant/ 1st civil revision petitioner filed his counter and it was adopted by the other civil revision petitioners/ defendants. In their counter, the revision petitioners have specifically contended that R.S.No.71/6 (Old SF No.91) does not belong to the plaintiff's family and that they have also preferred an appeal before this court in A.S.No.314 of 2010 against the preliminary decree and the same is still pending and therefore, they prayed for dismissal of the petition.

3. The First Additional District Judge, Erode, after analysing the evidence on record, had concluded that except the resurvey number, boundary descriptions are not altered and therefore, the petition can be allowed. Accordingly, he allowed the application vide his fair and decretal order dated 26.07.2012. Aggrieved over the same, the present revision petition is filed.

4. Mr.R.Siddharth, learned counsel appearing for the revision petitioners would contend that in the plaint in O.S.No.18 of 2007, survey number has been clearly indicated as R.S.No.73 and that the plaintiff cannot be permitted to amend the first item of the suit property as though it is situate in survey number 71/6 and that too under Section 152 of the Code of Civil Procedure.

5. It is relevant to extract Section 152 of the Code of Civil Procedure.

*152. 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.*

Therefore, Section 152 of the Code of Civil Procedure envisages that 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. Here, the petition is filed under Section 152 of the Code of Civil Procedure by the plaintiff. The amendment sought for by the plaintiff is not correction of clerical or arithmetical mistakes in judgment or in the preliminary decree passed by the I Additional Distirct Judge, Erode. On the contrary, the plaintiff wants to amend the first schedule of property, by substituting the survey number as 71/6. Such an amendment cannot be entertained at the stage of final decree for partition under Section 152 of the Code of Civil Procedure.

6. Mr. V.S.Kesavan, learned counsel appearing for the respondents would contend that except the survey number, boundary descriptions remain the same and therefore, there is no dispute in identifying the suit property. He would also contend that the plaintiff was able to find out the correct position only after an advocate commissioner was appointed by the learned I Additional District Judge, in the final decree proceedings.

7. The specific contention of the civil revision petitioners is that survey number 71/6 does not belong to the plaintiff's family and it is the property of some third parties. Such a plea is raised by the revision petitioners in their counter in I.A.No.278 of 2012. The learned I Additional District Judge, Erode without going through this aspect, had passed an order holding that except the survey number of the suit property, boundary descriptions remain the same. He has not also adverted his attention to the section of law filed by the plaintiff to amend the preliminary decree. Without amending the plaint schedule, the preliminary decree cannot be amended. Therefore, the orders passed by the I Additional District Judge, Erode allowing I.A.No.278 of 2012 in I.A.No.368 of 2010 in O.S.No.18 of 2007 cannot be sustained and is liable to be dismissed.

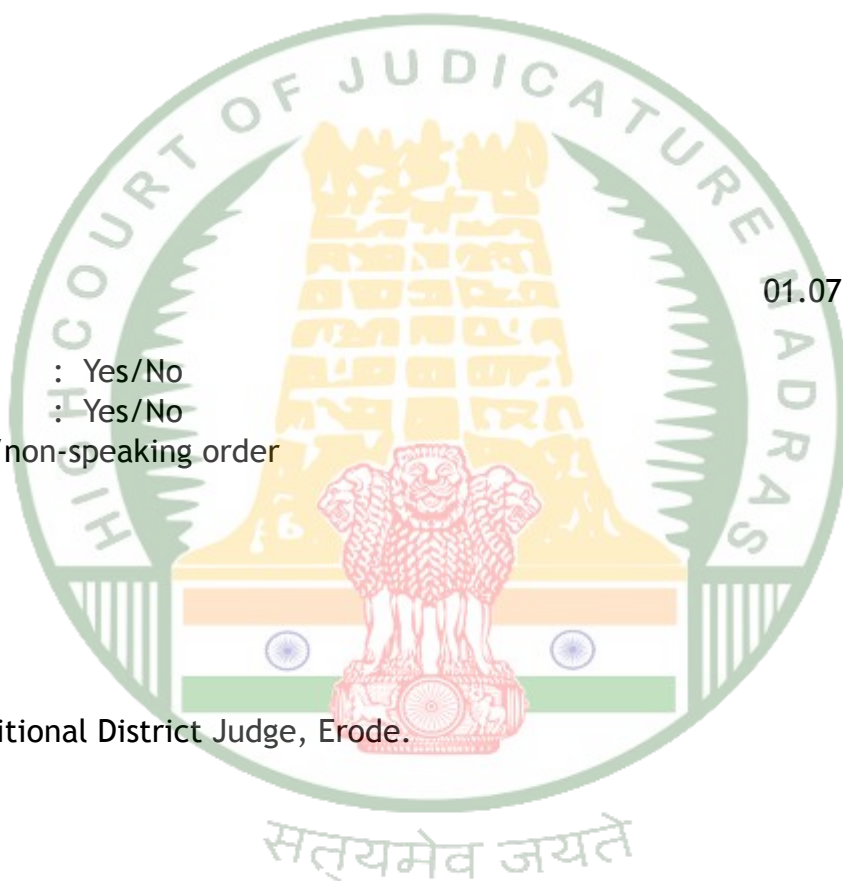
8. In the result, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed. The orders dated 26.07.2012 passed in I.A.No.278 of 2012 in I.A.No.368 of 2010 in O.S.No.18 of 2007 passed by the I Additional District Judge, Erode is set aside.

01.07.2019

Index : Yes/No  
Internet : Yes/No  
Speaking/non-speaking order  
mst

To

The I Additional District Judge, Erode.



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R.HEMALATHA,J.  
mst



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