

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.547 of 2015

and

M.P.No.1 of 2015

N.Kothandapani

... Petitioner

vs.

1.Thamilarasi
2.Pon Kumar
3.Pattammal(died)
4.Punithavathi
5.Jayaraman
6.Janatha

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 25.10.2013 made in I.A.No.1712 of 2009 in O.S.No.21 of 2008 on the file of the Additional District Munsif Court, Villupuram.

For Petitioner : M/s.Sarvabhauman Asso. for
Sam Jayaraj Houston

For R1 & R2 : R.Meenal

For R5 & R6 : No appearance

ORDER

The present Civil Revision Petition is directed against the fair and

decretal order dated 25.10.2013 passed in I.A.No.1712 of 2009 in O.S.No.21 of 2008 by the I Additional District Munsif Court, Tirukoilur. I.A.No.1712 of 2009 was filed to amend the plaint. By the impugned order, the 1st Additional District Munsif Court has dismissed the said application.

2.The petitioner is the plaintiff in O.S.No.21 of 2008. The said suit was filed for declaration and permanent injunction. It is the case of the petitioner in the suit schedule properties were allocated to the petitioner pursuant to a partition between the petitioner, R5 and the husband of R4 on 01.12.1995.

3. According to the petitioner, during the pendency of the suit, the respondents Nos.1 and 2 (defendants Nos.1 & 2) have demolished a wall and had put a staircase and therefore the petitioner wanted to amend the description of the buildings in the plaint. Therefore, the petitioner filed I.A.No.1712 of 2009. The Court below conducted enquiry and dismissed the application vide the impugned order on 25.10.2013.

4. Aggrieved by the same, the petitioner has been filed the present Civil Revision Petition.

5. The learned counsel for the petitioner is relied upon the following cases:-

- i. **Hi.Sheet Industries vs Litelon Limited** 2006 (5) CTC 609.
- ii. **Rajesh Kumar Aggarwal and Others vs K.K.Modi and Others** (2006) 4 SCC 385.
- iii. **Ragu Thilak D.John vs S.Rayappan and Others** (2001) 2 SCC 472.

6. In **Ragu Thilak D.John vs S.Rayappan and Others** (2001) 2 SCC 472, wherein it has been held that the object of Order 6 Rule 17 of CPC was to allow either these parties amend their pleadings in such a 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 this Court. The Court held that 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.

7. In **Rajesh Kumar Aggarwal and Others vs K.K.Modi and Others** (2006) 4 SCC 385, it was also held that the object of the rule is that the

courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

8. The full bench of this court in **Hi.Sheet Industries vs Litelon Limited** 2006 (5) CTC 609, referring the several decisions and concluded the as follows:-

“1) that the delay in filing the Application for amendment of the pleadings is not fatal when no serious prejudice is shown to have caused to the opposite party so as to take away any accrued right and the Court should take notice of the subsequent events in order to shorten the litigation to preserve and safeguard the rights of both the parties and to subserve the ends of justice and while doing so, the Court was not justified in allowing or disallowing the amendments so as to defeat the valuable rights of the parties and amendments of pleadings should be allowed which are necessary for determination of the real controversy in the suit and while doing so, the Court should not go into the correctness or falsity of the main case and it should not record the finding on the merits of the amendment as it should be done only during the trial of the Suit.”

9. The learned counsel for the respondents No.1 & 2 submitted that the 1st and 2nd respondents possess the properties as stated in the written statement and confirmed by the Advocate Commissioner.

10. From the facts of the case it is noticed that the lower court has

prejudiced the issue by giving a findings on the merits of the case in the suit in I.A.No.1712 of 2009 and has thereby practically rendered the relief for permanent injunction. Therefore, the impugned order deserves to be interfered. Impugned order is therefore, set aside and I.A.No.1712 of 2009 is allowed.

11. In view of the observations, the present Civil Revision Petition is to be allowed. The petitioner is permitted to amend the plaint within a period of four weeks from the date of receipt of a copy of this order. In case the plaint is amended, the respondents are permitted to file additional written statement. The Court may therefore may frame additional issues if required and proceed to complete the proceedings.

12. It is noticed that the suit is of the year 2008. The learned Principal District Munsif, Tirukoilur is therefore directed to dispose the suit within a period of six months from the date of receipt of a copy of this order.

13. The present Civil Revision Petition is thus allowed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

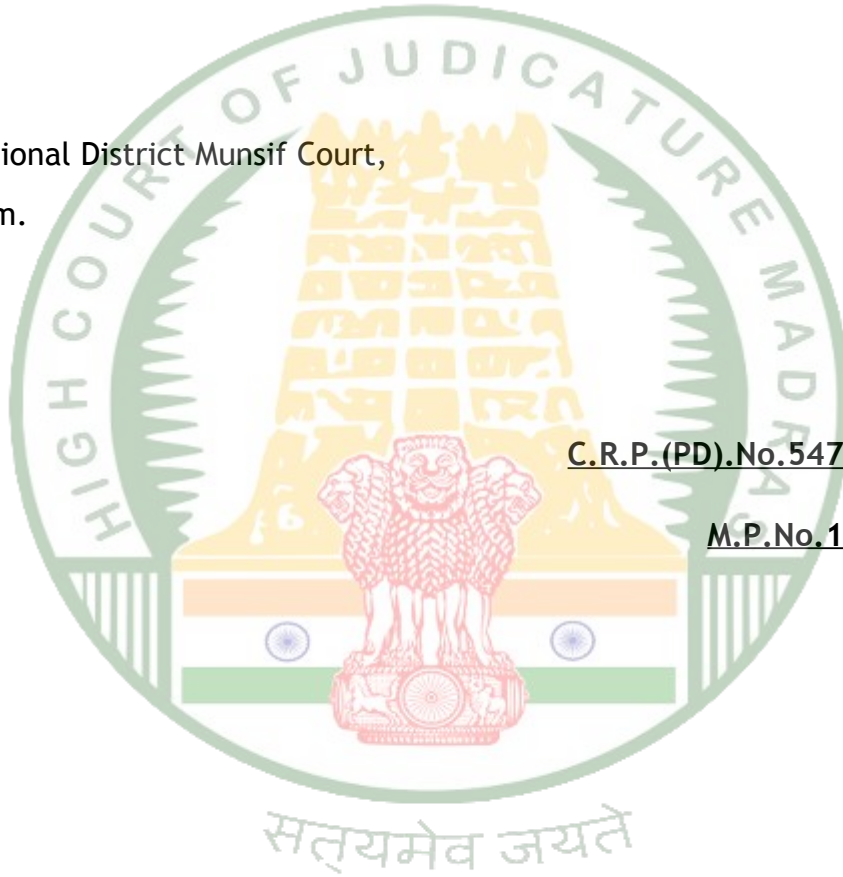
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C.SARAVANAN,J.

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To

The Additional District Munsif Court,
Villupuram.



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