

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P(PD).No.368 of 2013

and

M.P.No.1 of 2013

1. Nallasamy
2. Ponnusamy

Petitioners

Versus

1. Palanisamy Gounder
2. M/s. Surya Perundurai Food Products (P) Ltd., Company
Rep by its Managing Director
Perundurai
3. M/s. The Tamil Nadu Industries Investment Corporation Ltd
Rep by its present Branch Manager
Erode
4. K.S. Velumani
5. V. Samiyathal

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 04.10.2012 passed in I.A.NO.237 of 2012 in O.S.No.215 of 2009 on the file of Subordinate Court, Perundurai.

For Petitioners : Mr.S.Kaithamalaikumaran

For Respondents : R1 to R3 – No appearance
R4 & R5 – Mrs.P.T.Ramadevi

ORDER

The above Civil Revision petition is filed against the order of the trial Court passed in I.A.No.237 of 2012 in O.S.No.215 of 2009 dated 04.10.2012, seeking the amendment in the plaint. The Original Suit has been filed to set aside the document of sale executed by the 3rd defendant infavour of the 4th and 5th defendants. When the Suit was pending before the Subordinate Court, Perundurai, the plaintiffs have filed IA No.237 of 2012 seeking the relief to correct the clerical mistakes appeared in the plaint, in respect to the Survey numbers of the property and the Document number.

2. It is the contention of the plaintiffs that instead of original Survey No.124, in Paragraph Nos.4, 5, 6, 8, 9 and 10 of the plaint, the Survey numbers have been mentioned as 127/6, 124-A, 125-A. Similarly, the document number is also mentioned as 318 of 2007 instead of 378 of 2007. Hence, the necessary amendment in the plaint was sought for by the plaintiffs in the above IA.No.237 of 2012.

3. The main defense of the defendants is that the amendment is not maintainable in view of the amendment in Civil Procedure code. The learned Trial Judge dismissed the said application on the ground that there was no due diligence shown by the plaintiffs. Despite the mistakes pointed out in the written statement, they have not filed any application to amend the Survey numbers immediately. Hence,

4. Heard the learned Counsel Mr.S.Kaithamalaikumaran, for the Revision Petitioner and Mrs.P.T.Ramadevi, the learned Counsel appearing for the respondents 4 and 5.

5. The learned Counsel appearing for the revision petitioner would submit that the nature of the amendment sought for by the plaintiffs will not change the character of the Suit and it is only normal clerical mistake and without considering this aspect, the learned Trial Judge dismissed the application.

6. The learned Counsel appearing for the 4th and 5th respondents would submit that the application filed by the plaintiffs seeking the amendment has been filed only after the commencement of trial, which is not permissible in law.

7. I have perused the entire materials available on record. The nature of amendment sought for by the plaintiffs is only to correct the Survey numbers in some paragraphs of the plaint, whereas the original survey number 124 is correctly mentioned in the plaint in some of the paragraphs. Similarly, the document, which sought be assailed shown as Document No. 318 of 2007 instead of 378 of 2007. These are all the minor mistakes crept in the plaint. These mistakes are nothing but typographical error. At the same time, the change in the survey numbers and the document number will not affect the character of the Suit.

8. Merely, the amendment sought for is after commencement of chief examination is not a valid ground to deny the amendment in the plaint, since the original Suit itself was filed to challenge the sale transactions happened among the plaintiffs and defendants. Further, it is quiet normal that only when the counsels informed about the mistakes in the plaint to the litigants, it will be known to them and therefore by denial of the amendment in the plaint, the parties can not be penalised.

9. Hence, I am of the considered view that this Civil Revision petition is to be allowed and the dismissal order of the trial Court in IA.No.237 of 2012 is set aside and time for amendment and filing amended plaint copy is 14 days after receipt of copy of this Order.

10. With these observations, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.02.2019

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Index : Yes / No

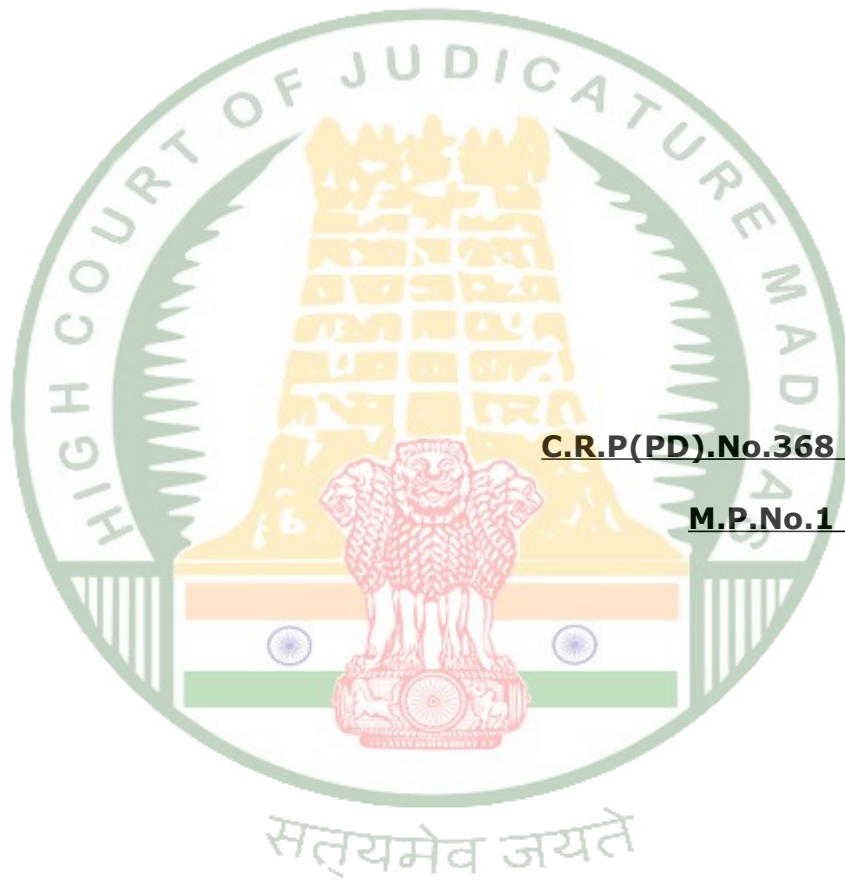
Internet : Yes / No

Speaking Order/Non-Speaking Order

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N. SATHISH KUMAR, J.,

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