

CRP No.4634 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

**CRP (PD) No.4634 of 2013**

**M.P.No.1 of 2013**

1. V.Subramani  
2. S.Sasikumar  
3. S.Pradeepkumar  
4. R.Palaniammal

... Petitioners

Vs.

T.Thangamani

... Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 24.07.2013 passed in I.A.No.1158 of 2012 in O.S.No.115 of 2010 by the I Additional District Judge, Salem.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.R.Nalliappan

**ORDER**

The civil revision petitioners are the defendants in O.S.No.115 of 2010 on the file of the I Additional District Judge, Salem. The

respondent/ plaintiff filed the above suit for partition of the suit properties. The defendants filed their written statement and both the parties went for trial. The plaintiff thereafter, filed a petition in I.A.No.1158 of 2012 under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure to amend the plaint as detailed hereunder.

*Details of Amendment:-*

*I. In the plaint schedule of properties, delete item No.3 and add as:*

*Item No.3:-*

*(1) In Salem West R.D., Edapaddy Sub R.D., Edapaddy Taluk, Koranampatti Village,*

*(i) S.No.193/4C, P.H.0.24 for this Acre: 0.59, Assessment Rs.0.92*

*(ii) S.No: 193/5C, P.H: 0.18.5, for this Acre: 0.45, Assessment Rs.0.72*

*(iii) S.No: 363/2, P.H: 0.13.0, for this Acre: 0.32, Assessment Rs.0.50*

*(iv) S.No: 363/3, P.H: 0.12.5, for this Acre: 0.31, Assessment Rs.0.48.*

(v) S.No: 363/6, P.H: 0.12.0, for this Acre: 0.30, Assessment Rs.0.25.

(vi) S.No: 363/11, P.H: 0.11.0, for this Acre: 0.27, Assessment Rs.0.42.

(vii) S.No: 363/14, P.H: 0.11.0, for this Acre: 0.32, Assessment Rs.0.42.

(viii) S.No: 363/15, P.H: 0.11.5, for this Acre: 0.28 1/2, Assessment Rs.0.44.

(ix) S.No: 363/18, P.H: 0.65.5, for this Acre: 0.16, Assessment Rs.0.25.

(x) S.No: 363/19, P.H: 0.07.0, for this Acre: 0.17 1/2 , Assessment Rs.0.27.

(xi) S.No: 363/1, P.H: 0.12.0, for this Acre: 0.29 1/2, Assessment Rs.0.46.

(xii) S.No: 363/4, P.H: 0.12.0, for this Acre: 0.29 1/2, Assessment Rs.0.46.

(xiii) S.No: 363/5, P.H: 0.12.0, for this Acre: 0.29 1/2, Assessment Rs.0.46.

(xiv) S.No: 363/12, P.H: 0.12.5, for this Acre: 0.31, Assessment Rs.0.48.

(xv) S.No: 363/13, P.H: 0.12.0, for this Acre: 0.29 1/2, Assessment Rs.0.46.

(xvi) S.No: 363/16, P.H: 0.21.0, for this Acre: 0.52, Assessment Rs.0.81.

(xvii) S.No: 363/17, P.H: 0.06.5, for this Acre: 0.16, Assessment Rs.0.425.

(xviii) S.No: 193/3A, P.H: 0.08.0, for this Acre: 0.20, Assessment Rs.0.31.

(xix) S.No: 193/4D, P.H: 0.14.5, for this Acre: 0.36, Assessment Rs.0.57.

(xx) S.No: 193/1, P.H: 0.98.0, for this Acre: 2.29 1/2, Assessment Rs.3.59, in this out of Acre: 1.41 1/4 an extent of 0.88 1/4 cents of land. Value of this property is Rs.40,00,000

(xxi) S.No:193/3B, P.H: 0.28.0, for this Acre: 0.69, Assessment Rs.1.08

(xxii) S.No:193/3B, P.H: 0.58.5, for this Acre: 1.44 1/2, Assessment Rs.2.26

(xxiii) S.No:193/5B, P.H: 0.49.5, for this Acre: 1.22, Assessment Rs.1.92

(xxiv) S.No:363/7, P.H: 0.32.5, for this Acre: 0.80,  
Assessment Rs.1.25

(xxv) S.No:363/20, P.H: 0.11.5, for this Acre: 0.29,  
Assessment Rs.0.41

(xxvi) S.No:364/2A, P.H: 0.16.0, for this Acre: 0.40,  
Assessment Rs.0.83

(xxvii) S.No:363/10, P.H: 0.34.5, for this Acre: 0.85,  
Assessment Rs.1.33.

(xxviii) S.No:363/21, P.H: 0.13.0, for this Acre: 0.32,  
Assessment Rs.0.56

(xxix) S.No:364/4A, P.H: 0.13.5, for this Acre: 0.33 1/2,  
Assessment Rs.0.75

(xxx) S.No:193/3C, P.H: 0.28.5, for this Acre: 0.70,  
Assessment Rs.1.11 in this Acre: 0.50

(xxxi) S.No:193/4A, P.H: 0.21.5, for this Acre: 0.53,  
Assessment Rs.0.84

(xxxii) S.No:193/4B, P.H: 0.11.0, for this Acre: 0.27,  
Assessment Rs.0.43

(xxxiii) S.No:191/7, P.H: 0.11.0, for this Acre: 0.27,  
Assessment Rs.0.42

*Totally 14.66 1/2 acres of land with all mamool and easementary rights as mentioned in the sale deed in document No.1489/2012. In this 1/6th share.*

*Value of the properties is Rs.15,00,000/-*

*(II) In Salem West R.D.Magudanchavadi Sub R.D., Edapaddy Taluk, Kachhupalli Village, S.No.386/2, P.H.1.87.0 for this P.A.4.82, Assessment Rs.2,31, in this 4.62 acres of land with all mamool and easementary rights as mentioned in the sale deed in document No.905/2012. In this 1/3rd share.*

- (III) (1) Tavera Car bearing registration No.TN-30-U-7799*  
*(2) Ashok Leyland Lorry bearing No. TN-52-2199*  
*(3) Ashok Leyland Lorry bearing No.TN-52-C-1899*  
*(4) Ashok Leyland Lorry bearing No.TN-52-2266*  
*(5) Ashok Leyland Lorry bearing No.TN-52-C-1769*  
*(6) Ashok Leyland Lorry bearing No.TN-52-D-3769*

*Value of the properties is Rs.45,00,000/-*

*Total Value of this item is Rs.1,00,00,000.*

2. The first revision petitioner/first defendant filed his counter and the same was adopted by the other revision petitioners/other defendants.

3. The learned I Additional District Judge, Salem, after analysing the evidence on record, allowed the said application. Aggrieved over the same, the defendants have filed the present civil revision petition.

4. Heard Mr.V.Raghavachari, learned counsel appearing for the civil revision petitioners and Mr.R.Nalliappan, learned counsel appearing for the respondent.

5. The suit in O.S.No.115 of 2010 was filed for partition of the suit properties. The main contention of the respondent/plaintiff is that the suit item No.1 and 2 are the ancestral properties of the plaintiff and the defendants 1 to 3 and that from and out of the income derived from the items No.1 and 2, the defendants purchased other properties including lorries and are carrying on Lorry Transport business.

6. In the affidavit filed in I.A.No.1158 of 2012, the respondent/plaintiff had contended that the first respondent/first defendant after filing of the suit, purchased several properties from and out of the income derived from the ancestral properties mentioned in the plaint, which were made known to the plaintiff only recently. His another contention is that he immediately applied for the certified copies of sale deeds and came to know that the first respondent along with some other persons has purchased 14.66 1/4 acres of land through a sale deed registered in document No.1489/2010, in which he has got 1/5th share and also purchased 4.62 acres of land along with 2 other persons through a registered sale deed in document No.905/2012, in which he has got 1/3 share. According to the respondent/plaintiff, these properties were purchased from and out of the income derived from the joint family properties and therefore, these properties also to be construed as joint family properties. It is further averred that subsequent to the filing of the suit, the first respondent sold the lorries mentioned in the item No.3 of the schedule of properties to third parties and purchased two lorries in his name and three lorries in the name of his second wife Muthulakshmi. According to the respondent/plaintiff, he has got 1/4 share in the newly

purchased lorries.

7. In the counter, the respondents have averred that the properties purchased on 28.04.2010 are the self acquired properties of the civil revision petitioners and that those properties were also sold off. It is further averred that the first item mentioned under "details of amendment" was already sold off and therefore, the said property cannot be included. According to them, the car bearing No.TN30U 7799 and the lorries bearing registration Nos. TN52U 2199 and TN52C 1899 are the exclusive properties of the respondent and that the other lorries are the exclusive properties of the first respondent's wife Muthulakshmi. Therefore, they prayed for dismissal of the petition.

8. It is settled law that amendment petitions have to be liberally considered and unless any prejudice is shown to be caused to the defendant, the application should be allowed. However, Mr.V.Raghavachari, learned counsel appearing for the revision petitioners contended that when it is clearly averred that the properties are the self acquired properties of the civil revision petitioners, the I Additional District Judge, Salem, allowed the amendment petition and that too after the settlement of issues in the

suit in O.S.No.115 of 2010.

9. His further contention is that the learned I Additional District Judge, Salem overlooked the fact that in so far as the pre-suit transaction is concerned, the respondent/plaintiff ought to have proved that despite due diligence, the transaction was not known to him. His specific contention is that since some of the properties were sold off, the amendment should not have been allowed by the trial court. It is also contended by him that the Code of Civil Procedure does not provide for amendment incorporating transaction that have taken place after the presentation of the plaint. He therefore, prayed for allowing the civil revision petition.

10. Per contra, Mr.R.Nalliappan, learned counsel appearing for the respondent contended that the respondent/plaintiff had filed the suit for partition of the suit properties and since he has specifically averred that several properties were purchased by the defendants from out of the income derived from Item No.1 and 2 of the schedule of properties, the I Additional District Judge, Salem rightly allowed the application filed under Order VI Rule 17 of the Code of Civil Procedure. It is also contended by him

that if all the properties belonging to the family are not included, the suit would become bad for partial partition and therefore, the civil revision petition is liable to be dismissed.

11. The object of Order VI Rule 17 is that the court 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. In fact, Order VI Rule 17 consists of two parts. The first part is discretionary and leaves it to the court to order amendment of pleadings. The second part is imperative (shall) and enjoins the court to allow all the amendments, which are necessary for the purpose of determining the question in controversy between the parties. All though Order VI Rule 17 permits amendments in the pleadings "at any stage of the proceedings", but a limitation has been engrafted by means of proviso to the effect that no application for amendment shall be allowed after the trial is commenced. By Amendment Act 46 of 1999, though Order VI Rule 17 as deleted, it was again restored by the Amendment Act 22/2002, but with a rider in the shape of the proviso limiting the power of amendment to a considerable extent. The object of newly inserted Rule 17 is to control

filing application for amending the pleading subsequent to commencement of the trial. The proviso, thus, curtails absolute discretion to allow amendment at any stage, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

12. The specific contention of the respondent/ plaintiff is that he came to know about certain transactions made by the defendants only after filing of the suit. In the instant case, trial has not yet commenced. Since the suit is filed by the respondent/plaintiff for partition of the suit properties on the premise that the suit item No.1 and 2 are the ancestral properties of the plaintiff and the defendants and that other properties are purchased from out of the income derived from item No.1 and 2, inclusion of all the properties are just and necessary. The question whether the properties are the exclusive properties of the defendant or purchased from out of the income derived from the ancestral properties of the plaintiff and the defendants as alleged by the respondent/plaintiff can be decided only after the conclusion of the trial. In the facts and circumstances, the orders passed by the I Additional District Judge, Salem allowing the amendment petition filed by the respondent/plaintiff cannot be said to be wrong and I

do not see any reason to interfere with the orders passed by the trial court.

13. In the result,

(i) The civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed.

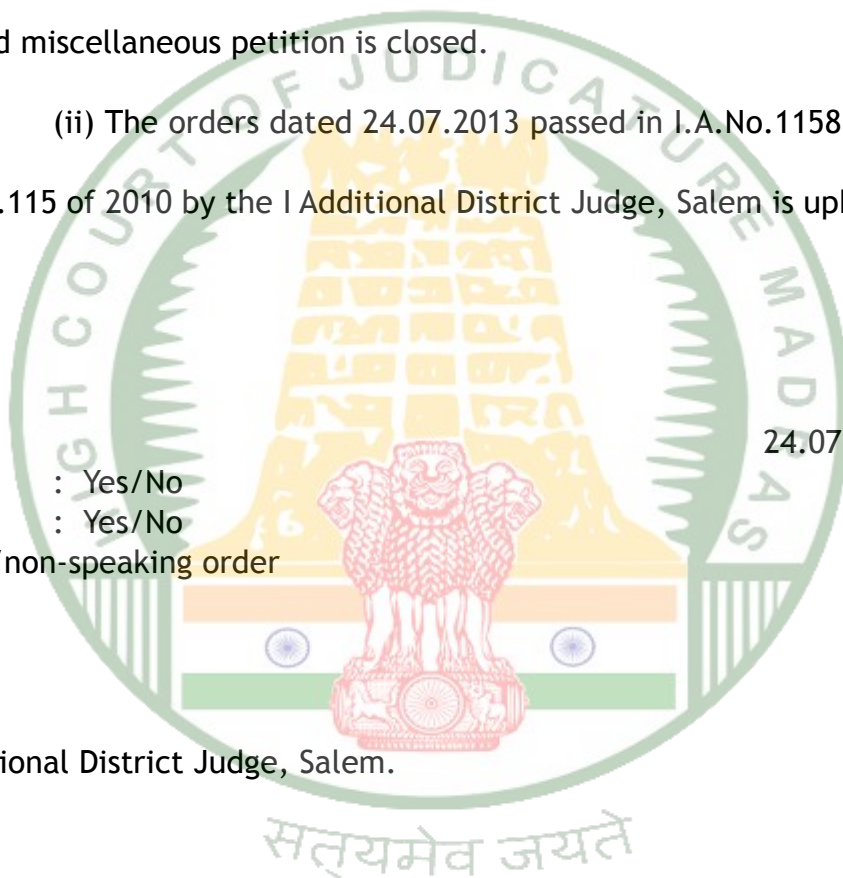
(ii) The orders dated 24.07.2013 passed in I.A.No.1158 of 2012 in O.S.No.115 of 2010 by the I Additional District Judge, Salem is upheld.

24.07.2019

Index : Yes/No  
Internet : Yes/No  
Speaking/non-speaking order  
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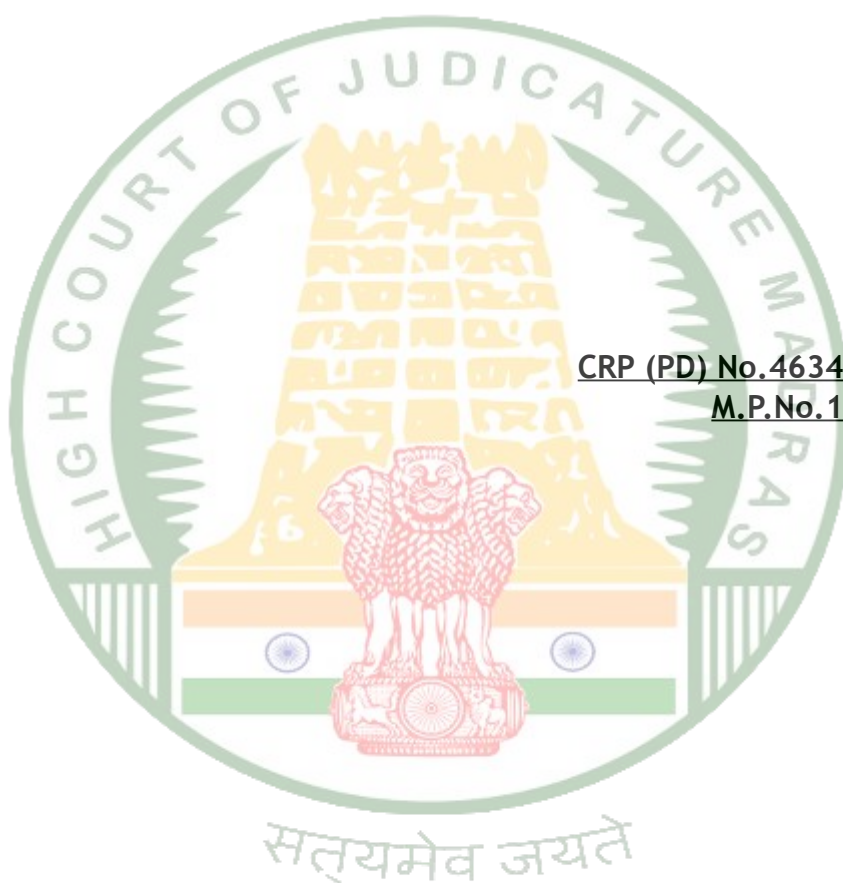
The Additional District Judge, Salem.



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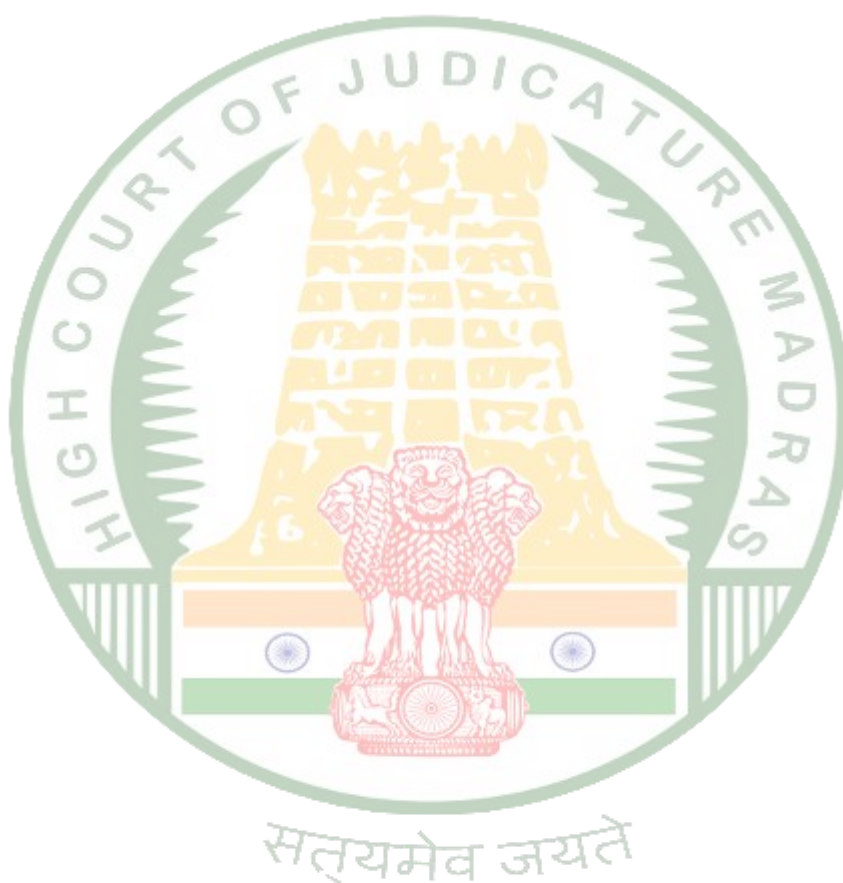
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