

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No.2668 of 2018

and

C.M.P.No.15886 of 2018

T.Sagunthala

..Petitioner/Plaintiff

Vs

Subramaniam(Died)

1.Rathinam

2.K.Eswari

3.Poovanan

4.Karthikeyan

5.Gowri

6.Sasikumar

7.Rajeshkanna

8.S.Banumathi

9.S.Valarmurugu

10.S.Malathy

11.S.Manikandaprabhu

12.R.K.Srinivasan

13.P.Savitha Srinivasan

.. Respondent/Defendants

Civil Revision Petition filed under Section 227 of the Constitution of India to allow this revision and set aside the fair and decretal order passed by the Principal District Munsif, Erode in I.A.No. 149 of 2018 in O.S.No. 373 of 2012, dated 27.06.2018 and consequently allow the application as prayed for.

For Petitioner : Mr.V.P.Sengottuvel

For R1 to R11 : Given up

For R12 & R13 : Mr.A.Kumarraguru

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Munsif, Erode, in I.A.No.149 of 2018 in O.S.No.373 of 2012, dismissing the said application filed by the plaintiff seeking to amend the plaint.

2 The facts in brief which are essential for disposing of the Civil Revision Petition are as follows and the parties are referred to in the same litigative status as in the suit. The parties are also referred to in the same as in the suit. The plaintiff had filed the suit in O.S.No.373 of 2012, on the file of the learned District Munsif, Erode, for partition and separate possession of her share in the suit schedule property. Admittedly, the suit schedule property belongs to the mother of the plaintiff. The defendants 4,5,7 and 11 have filed their written statement on 02.11.2013, wherein, they have contended that the mother had executed a Settlement Deed in favour of her sons and grandsons on 31.05.2010 and therefore, the properties are not available for partition. The contents of the said written statement has also been reiterated by the 13th and 14th defendants in their Written statement, which was filed in the month of April, 2015. After the matter was posted for arguments, it is seen that the impugned

petition came to be filed by the plaintiff seeking to amend the plaint with a prayer for declaring the Settlement Deed dated 31.05.2010 as not true, valid and a genuine one.

3 In the affidavit, which is filed in support of said petition, the plaintiff has contended that it is only after filing of the suit that she had come to know about the Settlement Deed. The said petition was vehemently opposed by the respondents 13 and 14 who are subsequent purchasers and ultimately by order dated 27.06.2018, the learned judge has dismissed the said petition. Challenging the same the writ petitioner/plaintiff is before this Court.

4 Mr.V.P.Sengottuvel, learned counsel appearing on behalf of the petitioner would contend that the application for amending plaint would not cause any prejudice to the defendants and further, he would also rely on the judgment of the Honourable Supreme Court of India in the case of **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (Dead) By LRS. [(2008) 8 SCC 511]** and had referred to paragraph 16, wherein the Honourable Supreme Court of India has held that amendments should be allowed if it does not work in-justice to the

other side or where it is necessary for the purpose of determining the real questions in controversy between the parties. It is seen that even as early as in the year 2013, the factum of the execution of the Settlement Deed was brought to the notice of the revision petitioner/plaintiff and once again reiterated in April 2015. The plaintiff has not cared to take out the amendment immediately and has waited till the evidence had been completed and the matter is posted for arguments. The judgment, which is relied upon by the learned counsel is prior to the amendment of the Code of Civil Procedure, 1904 and was not bar now after the amendment of the Code of Civil Procedure, the post trial amendments are generally to be dismissed, unless extreme circumstances are shown to for allowing the said amendment. In the instant case, no such reasons had been given and further it is on record that in the year 2013 itself the details of the Settlement Deed had been provided by the defendants and no steps have been taken by the plaintiff. It appears that the plaintiff's attempt is only for protracting the proceedings and the learned Judge has rightly rejected the said application.

5 I find no infirmity in the order passed by the learned Principal District Munsif, Erode in I.A.No. 149 of 2018 in

O.S.No. 373 of 2012, dated 27.06.2018. In the result, Civil Revision Petition Stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

21.02.2019

Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

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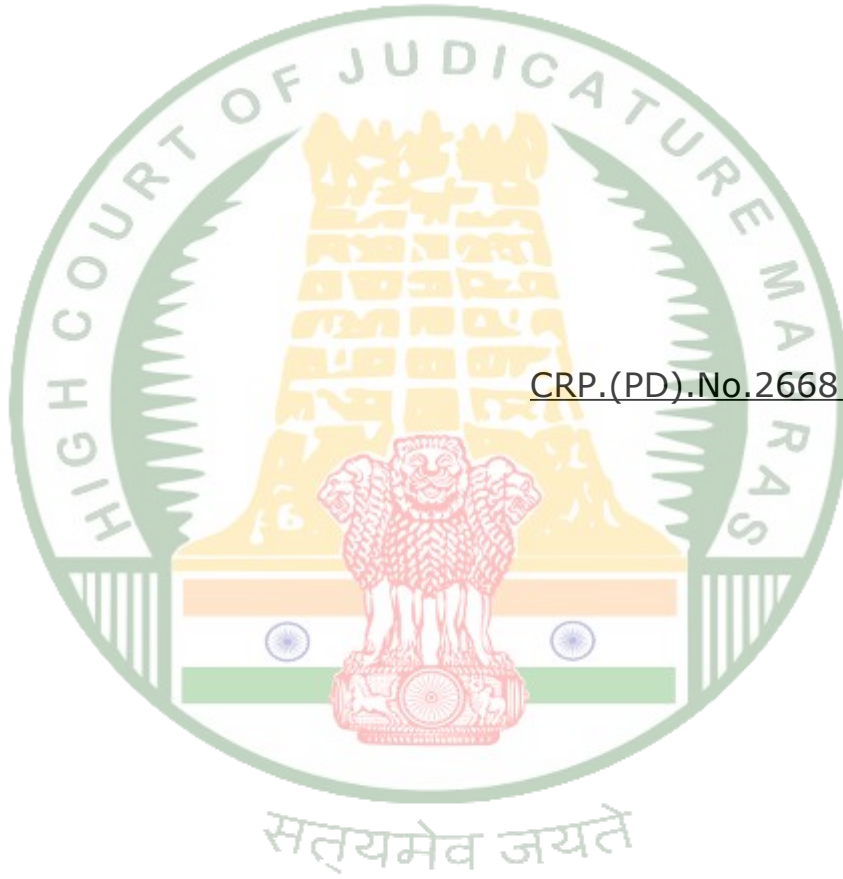
To

The Principal District Munsif,
Erode.



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P.T.ASHA, J.
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