

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.08.2019**

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD)No.3958 of 2014
and M.P.No.1 of 2014

Mr.Arumugham

...Petitioner

vs.

1.Mr.Varadharajan

2.Mr.Balaji

3.Mr.Ramalingam

4.Mr.Anand

5.Mrs.Sheela Devi

6.Mrs.Sangeetha

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order and Decretal Order dt.19.03.2014 passed by the Learned District Munsif at Madurantakkam, Kanchipuram District, dismissing I.A.No.89/2014 in O.S.No.190 of 2009.

For Petitioner : Ms.T.Vijaya Lakshmi
for M/s.N.Nagu Sah

For Respondents : Mr.S.Sriram
for Mr.K.Govi Ganesan for R1 to R6

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 19.03.2014, passed by the learned District Munsif at Madurantakkam, Kanchipuram District, in I.A.No.89/2014 in O.S.No.190 of 2009.

Brief facts leading to the filing of the instant revision:

2.The petitioner is the plaintiff in the suit O.S.No.190 of 2009 pending on the file of the learned District Munsif at Madurantakkam, Kanchipuram. The said suit was filed against the respondents/defendants, seeking for the following reliefs:

(i)to declare the plaintiff's title to the suit B schedule property;
and for consequential permanent injunction restraining the defendants their men, agents representatives, legal heirs, from way interfering with the plaintiff's peaceful possession and enjoyment of the suit B schedule property and

(ii)to direct the defendants to pay the cost of the suit to the plaintiff and

(iii)to grant such other suitable reliefs.

3.Pending the suit, an Advocate Commissioner was appointed by the Court to note down the physical features and measure suit schedule property at the instance of the petitioner/plaintiff. The Advocate Commissioner also submitted a report before the trial Court. Since the measurements of the suit schedule 'A' property as per the Advocate Commissioner's Report were different from the measurements given by the petitioner in the suit schedule 'A' property, I.A.No.89 of 2014 was filed by the petitioner in O.S.No.190 of 2009 under Order 6 Rule 17 CPC, to amend the plaint in the following manner:

In plaint schedule of property in the "A" schedule to delete 1 $\frac{3}{4}$ cents and add 0.02 cents.

To delete 35 feet and to add 38 feet.

4.A counter affidavit was also filed by the respondents/defendants in I.A.No.89 of 2014, denying the allegations of the petitioner and stating that the petitioner/plaintiff or the pre-deceassers in title never had any right of possession or enjoyment of the said 180 sq.ft. They have also stated that the petitioner/plaintiff has not proved with documentary evidence their

right to amend the plaint as sought for in I.A.No.89 of 2014.

5.By order dated 19.03.2014, the trial Court dismissed I.A.No.89 of 2014 in O.S.No.190 of 2009 on the ground that the petitioner cannot seek for amendment of the suit schedule 'A' property by incorporating the length of East West direction as 38 feet instead of 35 feet as the sale deed standing in favour of the petitioner or in the sale deed standing in favour of the pre-deceassers in title mentions only 35 feet and not 38 feet.

6.Aggrieved by the dismissal of I.A.No.89 of 2014, the instant Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India.

7.Heard Ms.T.Vijaya Lakshmi, learned counsel for the petitioner and Mr.S.Sriram, learned counsel for the respondents.

8.This Court has perused and examined the impugned order. Admittedly, the sale deed standing in the name of the petitioner as well as the sale deed of the petitioner's predecessor in title discloses that linear measurements from East to West is only 35 feet. However, through the amendment application, namely, I.A.No.89 of

2014 before the trial Court, the petitioner has attempted to incorporate the linear measurement between East West direction as 38 feet instead of 35 feet pursuant to the Advocate Commissioner's report submitted to the trial Court.

9.As rightly held by the trial Court when the sale deed standing in the name of petitioner only discloses 35 feet East to West direction, the schedule cannot be amended to incorporate 38 feet instead of 35 feet. If it is granted, it may result in the petitioner/plaintiff seeking relief against a property owned by a neighbour.

10.A Single bench judgment of this Court relied upon by the learned counsel for the petitioner in the case of **Ramaiya Asari vs. Ramakrishnan Naicker alias Kollimalai Naicker and another** reported in **(2003) 3 M.L.J. 327**, is not applicable for the facts of the instant case. As in that case, no measurements were given in the original schedule of the plaint, but in the instant case measurements were given by the petitioner only in accordance with the sale deed standing in his name and the petitioner has attempted to amend the measurement contrary to the linear measurements

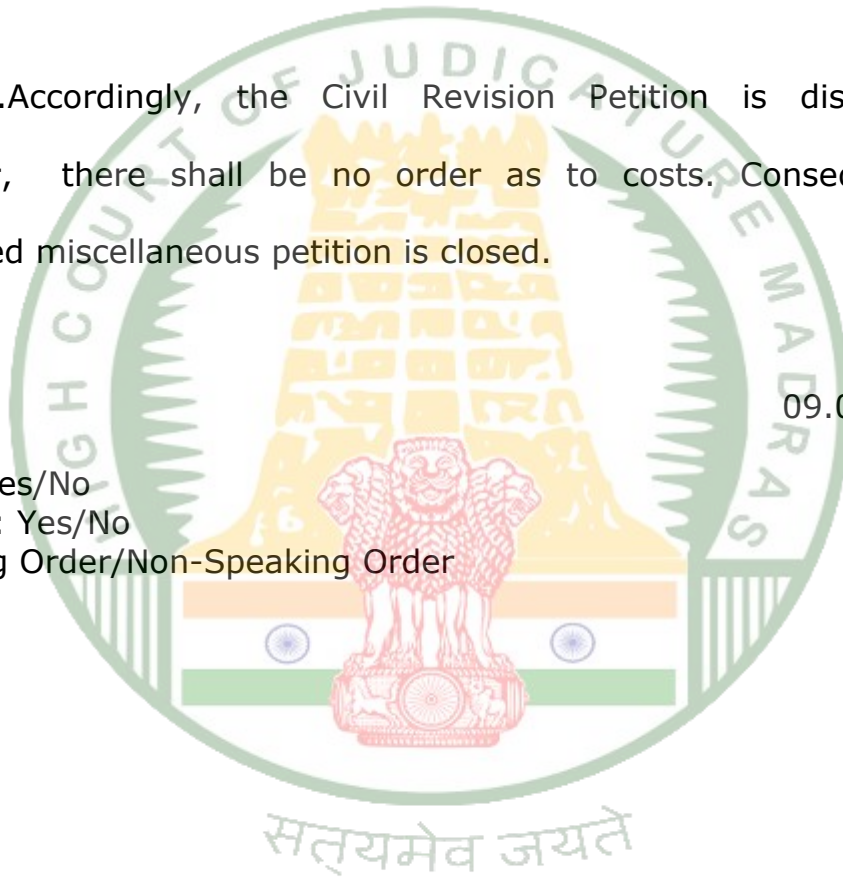
contained in the schedule to the sale deed standing in his name.

11.For the foregoing reasons, this Court is of the considered view that the trial Court has rightly rejected the amendment application and there is no merit in this revision.

12.Accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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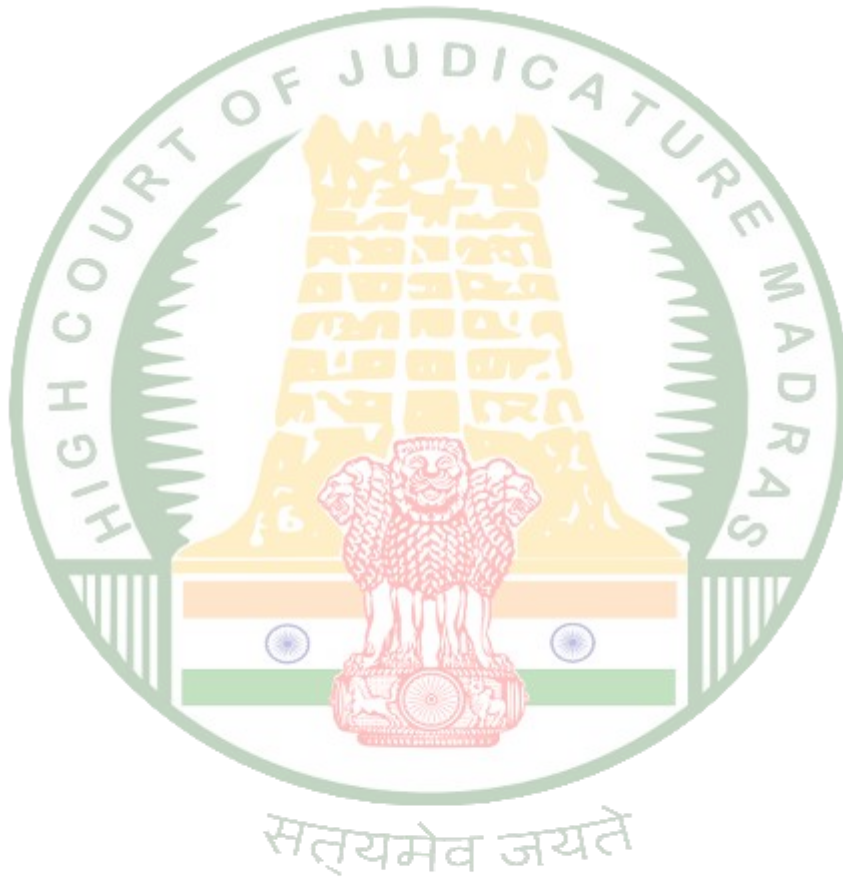
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To

The District Munsif at Madurantakkam, Kanchipuram District.

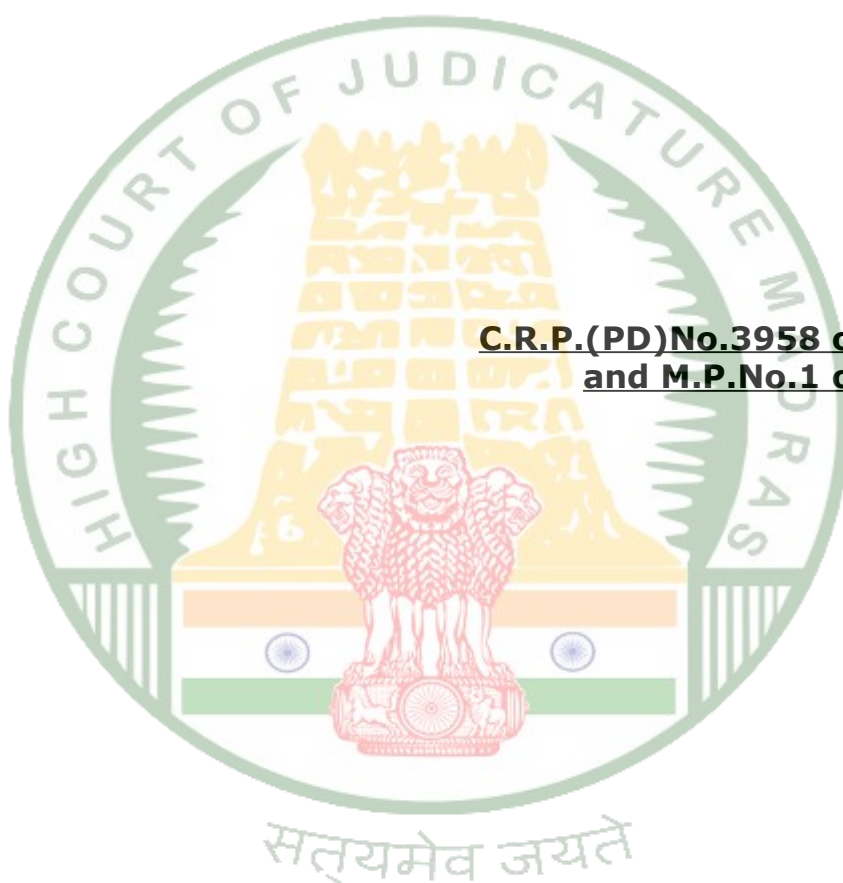


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