

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 28.10.2020

Pronounced on : 14.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No. 754 of 2020

and

CMP.No. 4038 of 2020

1. Aatheeswaran
2. Angusamy
3. Marimuthu

... Petitioners

Versus

1. Thirumathal
2. Rackimuthu

.... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.11.2019 passed in I.A.No.1404 of 2019 in O.S.No.333 of 2013 on the file of District Munsif, Udumalaipet.

For petitioners : Mr. R.Kannan

For Respondents : Mr. D.R.Arunkumar

ORDER

The revision petitioners are the plaintiffs in the suit.

2. The Civil Revision Petition is filed under Article 227 of the Constitution of India. The petitioners/plaintiffs filed a suit in O.S.No. 333 of 2013 for partition and separate possession of the suit property and written statement was also filed by the defendants in the suit and trial has also been completed and DW2 was cross-examined and then necessary answers elucidated from him. Thereafter, the petitioners/plaintiffs filed in I.A.No.1404 of 2019 for amendment of the pleadings in order to include one survey number that was left out in the schedule of the property and also to give measurement of the land and that the aforesaid application was dismissed and hence, the petitioners/plaintiffs have filed this Civil Revision Petition.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials placed on record.

4. The petitioners/plaintiffs have filed a suit in O.S.No. 333 of 2013 for partition before the learned District Munsif, Udumalaipet and the same was pending. During the pendency of the suit, the petitioners/plaintiffs filed an interlocutory application under Order 6 Rule 16 of CPC., for amendment of the plaint, in particular inclusion of one survey number in the schedule mentioned property. According to the petitioners, the said factum of missing one item of the property for came to the knowledge of the plaintiffs/petitioners during the cross examination of one Swarnamuthu (DW2), and the aforesaid application was dismissed by the District Munsif Court, Udumalpet, on the ground that there was no such answer in the cross examination. On perusal of the original schedule of the property in the plaint and the proposed amendment in Survey No.528-C2 to an extent of 0.35.50 was omitted in the plaint. Admittedly, non-inclusion of the survey number was not spoken to by the defendant either in the written statement or during his chief examination as DW1-Thirumathal, assumed significance. In the cross examination of DW2-Swarnamuthu, he has stated that the total extent of land covered in Survey Nos.528-A2, 528-B2, 528-C2, 528-E, 528-F, 528-G to a total extent is 5.80 and hence, taking the information from during cross examination from DW2 viz., Survey No.528-C2, to an extent of 0.35.50 was omitted, hence, the petition appears to have been filed.

5. It is not in dispute that the suit was filed in O.S.No. 333 of 2013 for partition. It is to be pointed out that even if one survey number is omitted to be mentioned by the plaintiffs, the petitioners will be put to irreparable loss and hardship. In the cross examination of DW2, he had mentioned the survey number 528-C2. Initially, the suit instituted was of the year 2013. Thereafter, there were so many Sub-Division made by the Revenue Department, and in that backdrop, the plaintiffs should have made an application for ascertaining the details of the Sub-Division.

6. Be that as it may, from the cross examination of DW2, it is elicited the present survey number viz., 528-C2 also forms part of the Joint Family property, such being the case, as is borne out record through the evidence of DW2, one survey number having been omitted to be included, non-inclusion of the same in the suit for partition will cause much hardship and irreparable loss and, therefore, in the interest of justice, this Court is of the view that this petition can be allowed on terms, in the interest of justice, the amendment petition has to be allowed to include the said survey number.

7. Accordingly, this petition is allowed, on payment of cost of Rs.2,000/- each to the respondents 1&2 by the petitioners/plaintiffs.

8. This Civil Revision Petition is allowed on the above terms and the order of the trial court in I.A. No.1404 of 2019, dated 22.11.2019 is hereby set aside and I.A. No.1403 of 2019 stands allowed. Further, the District Munsif Court, Udumalpet, is hereby directed to complete the trial proceedings in O.S.No. 333 of 2013 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msm

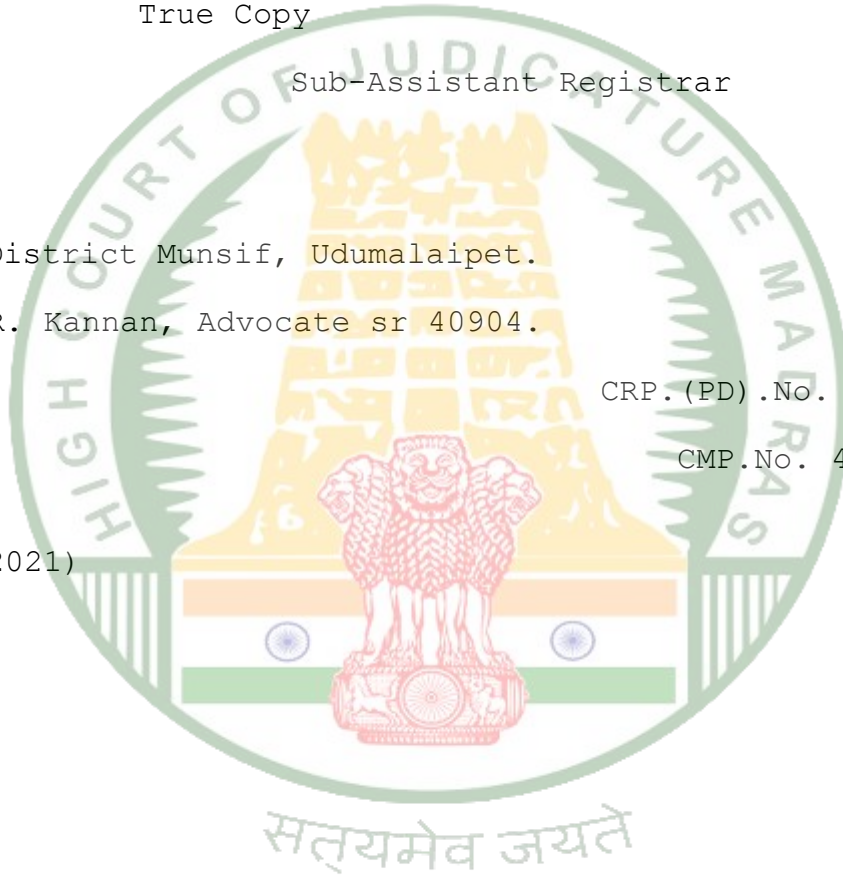
To

The District Munsif, Udumalaipet.

+1 CC Mr.R. Kannan, Advocate sr 40904.

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BR(CO)
SP(05/02/2021)



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