

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.176 of 2019
and C.M.P.No.1431 of 2019

M.R.DesappanPetitioner

Vs

1.P.Asokan @ Esak

2.P.Vellikannu

3.P.Sundar

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and decreetal order dated 29.10.2018 passed in I.A.No.236/2015 in O.S.No.32 of 2012, on the file of the Hon'ble District Munsif Court, Chengalpattu.

For Petitioner : Mr.D.Senthilkumar

For Respondents : Mr.P.Santhaseelan

ORDER

This Petition has been filed to set aside the fair and decreetal order dated 29.10.2018 passed in I.A.No.236/2015 in O.S.No.32 of 2012, on the file of the Hon'ble District Munsif Court, Chengalpattu.

2.The petitioner is the plaintiff before the trial Court and he filed the suit in O.S.No.32 of 2012, for the relief of permanent injunction on the suit property.

3.During trial, the plaintiff/revision petitioner has filed the I.A.No.236 of 2015 before the learned District Munsif, Chengalpattu, to amend the Survey no of the suit property as 106/2A of Eagattur Village.

4.After hearing both sides, the learned trial Judge dismissed the petition in I.A.No.236 of 2015 on the ground that if the amendment is allowed, it will change the nature and character of the suit. Hence dismissed the petition on 29.10.2018.

5.Aggrieved on the order of the learned trial Judge in I.A.No.236 of 2015, dated 29.10.2018, the plaintiff/revision petitioner is before this Court with the present prayer.

6.The learned counsel for the petitioner would submit that the trial Court without considering the valid facts and nature of the case, dismissed the petition. It is contrary to law and fact of the case. The plaintiff has filed the suit for permanent injunction with regard to plaint schedule property in Grama Natham Survey No.106/2B. When the case is posted for trial, it

came to know that the original Survey No. is 106/2A, by mistake it is mentioned as 106/2B. The defendants also filed a suit in O.S.No.124 of 2012, with regard to the same property, which is pending before the same Court, where the revision petitioner/plaintiff's suit is also pending. Under these circumstance, unless the Survey No. of the plaint schedule property is rectified, the revision petitioner/plaintiff will be prejudiced. The trial Court without considering this aspect, dismissed the petition and the learned counsel for the revision petitioner further reiterated the other grounds raised in the revision petition.

7.The learned counsel for the respondents/defendants supported the order of the trial Court and further submitted that it is false to say that the suit Survey No. is mistakenly mentioned. The revision petitioner/plaintiff is not connected with the Survey No.106/2A. The defendants/respondents are in continuous enjoyment and possession of Survey No.106/2A. By amending the Survey No. as 106/2A, the plaintiff/revision petitioner want to take possession of the property belongs to the defendants with an ulterior motive. He also obtained an exparte order of injunction, in respect of Survey No.106/2B. Now, if the amendment to

amend the Survey No.106/1A is allowed, the defendants/respondents will be prejudiced and the nature of the suit will be changed and thus pleaded to dismiss the Civil Revision Petition.

8.I have considered the arguments advanced on either side counsel and perused the records.

9.The suit is filed by the plaintiff/revision petitioner for the relief of permanent injunction against the defendants/respondents with regard to the plaint schedule properties, of the Survey No.106/2B of Eagattur Village. It is measured as 7 cents. The plaintiff/revision petitioner also obtained an exparte order of injunction for the plaint schedule property. While filing written statement, the defendants/respondents contended that the defendant/respondent is no way connected with the property in Survey No.106/2B. Further the defendants also filed a suit against the plaintiff in O.S.No.124 of 2012, with regard to the same property.

10.Under these circumstances, the plaintiff/revision petitioner has sought to amend the Survey No. of the suit property as 106/2A instead of 106/2B. The power to allow the amendment is wide and hence the Court should not adopt hyper technical approach, but on the other hand liberal

approach. Technicalities of law should not be permitted to hamper the administration of justice between the parties and amendments are allowed in the pleadings to avoid multiplicity of litigations. In this case, the boundaries and identification of property are same. Only the Survey No. has to be amended as 106/2A instead of 106/2B. All the amendments of the pleadings should be allowed which are necessary for determination or real controversies in the suit. In this case, in order to fix the suit for permanent injunction and also to decide, who is in possession, the amendments ought to be allowed for complete adjudication. Therefore, the order of the trial Court is unsustainable and I am inclined to set aside the order of the trial Court.

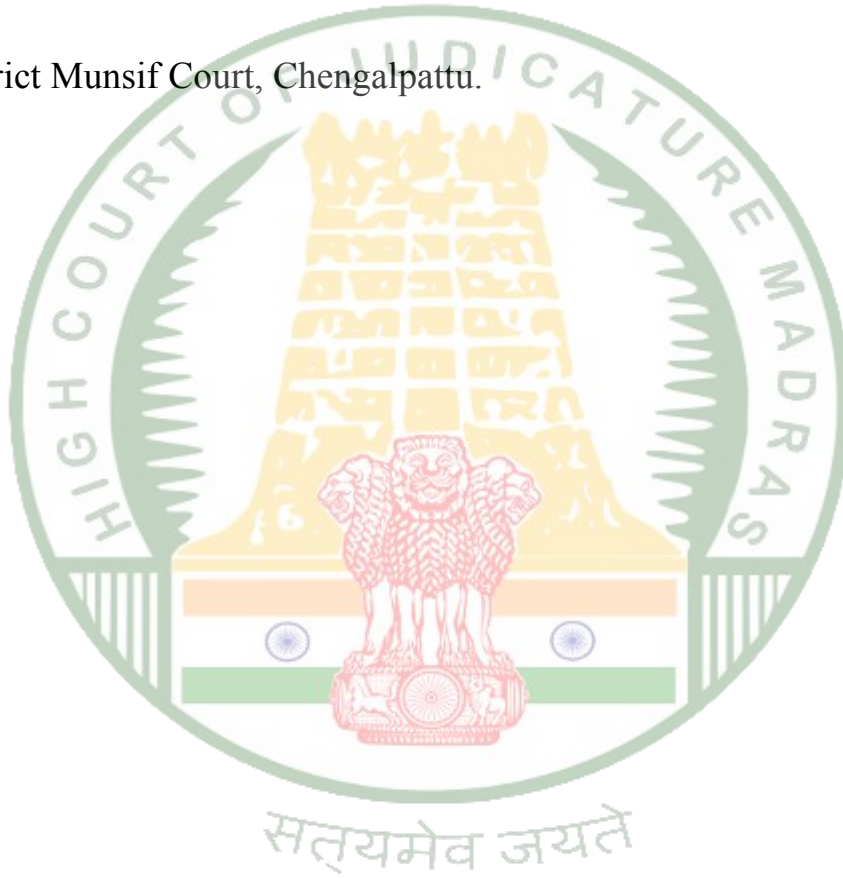
11.In the result, the Civil Revision Petition is allowed and the order made in I.A.No.236/2015 in O.S.No.32 of 2012, on the file of the Hon'ble District Munsif Court, Chengalpattu, dated 29.10.2018 is hereby set aside. No costs. Consequently connected miscellaneous petition is closed.

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14.12.2020

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To
The District Munsif Court, Chengalpattu.

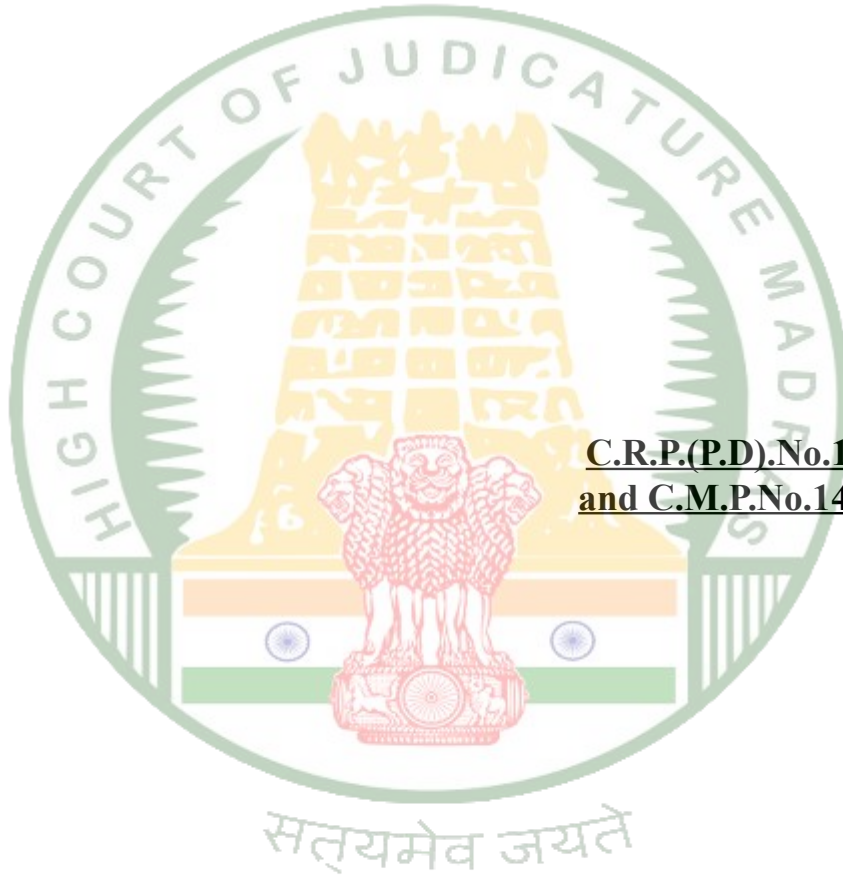


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V.SIVAGNANAM.J,

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