

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD)No.1062 of 2018
and
C.M.P.No.5620 of 2018

Santhi

...Petitioner/Defendant

Vs.

1.Kangammal
2.Govindaraj
3.Saravanan
4.Girija
5.Samundeeswari

...Respondents/Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of Indian, against the fair and decreetal order passed in I.A.No.1144 of 2017 in O.S.No.228 of 2015 passed by the Additional District Munsif, Tirupattur, Vellore District, dated 16.02.2018.

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For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.P.A.Sudesh Kumar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.1144 of 2017 in O.S.No.228 of 2015 on the file of the the learned Additional District Munsif, Tirupattur, Vellore District dated 16.02.2018.

2. The defendant in the suit in O.S.No.228 of 2015, whose application for amendment of the written statement was dismissed by the Trial Court on the ground that it would amount to retraction of an admission made in the pleadings, has come up with this Civil Revision Petition. The plaintiffs filed the suit for declaration and injunction contending that their property originally belonged to one Kamalammal wife of Munusamy. The plaintiffs being the heirs of Kamalammal, as her brother's children claimed to have inherited the property, since Kamalammal died issueless. The suit is being resisted by the defendant contending that she is the daughter of Kamalammal and therefore, the brother's children of Kamalammal cannot

claim any right over the property.

3. In paragraph 4 of the plaint, the plaintiffs have stated that the defendant is the daughter of one Kuppusamy of Guruvaniyanapalli Village and she has nothing do with Kamalammal, who is the owner of the property. In reply to the said statement made in the plaint, the defendant/petitioner, in her written statement, has stated that she is not the daughter of Kuppusamy. It is the said statement made in paragraph 9 of the written statement, which is now sought to be corrected. The defendant now wants to introduce the case that after the death of Kamalammal's husband, viz., Munusamy, Kamalammal married Kuppusamy and the defendant/petitioner herein was born to Kamalammal through Kuppusamy. The Trial Court dismissed the said application for amendment on the ground that it would amount to withdrawal of the admission made in the written statement by relying upon the judgment of the Hon'ble Supreme Court reported in **2016 (1) M.W.N (Civil) Page 540**. Hence, the Revision.

4. Heard, Mr.S.Parthasarathy, learned counsel appearing for the petitioner and Mr.P.A.Sudesh Kumar, learned counsel appearing for the respondents.

5. Mr.S.Parthasarathy, learned counsel appearing for the petitioner would vehemently contend that the Trial Court is not right in dismissing the application for amendment, on the ground that it would amount to withdrawal of the admission. According to him, it is only a typographical error that had crept in the written statement and therefore, she is entitled to get it corrected.

6. Contending contra, Mr.P.A.Sudesh Kumar, learned counsel appearing for the respondents would submit that the plaintiffs have come up with the specific case that the defendant is the daughter of Kuppusamy of Guruvaniyanapalli Village and she has nothing do with Kamalammal and Munusamy. While denying the said claim of the plaintiffs, the defendant has categorically stated that she is not the daughter of Kuppusamy and she is not even the heir of Kuppusamy. After having taken such a positive stand, it is

not open to the defendant to seek correction / amendment of the written statement to withdraw her admission, and make a claim that she is the daughter of Kuppusamy through Kamalammal.

7. I have considered the rival submissions.

8. I am in entire agreement of the conclusion of the Trial Court that the amendment, which is now sought by the defendant, would amount to withdrawal of an admission. The Hon'ble Supreme Court in the decision referred supra has pointed out that an amendment which would amount to withdrawal of an admission made in the pleadings, cannot be allowed. Though it is claimed that it was a mistake, it is open to her to explain the mistake at trial and prove that the admission was an inadvertent error. I do not think she should be allowed now to take back the admission in order to gain advantage over the other side.

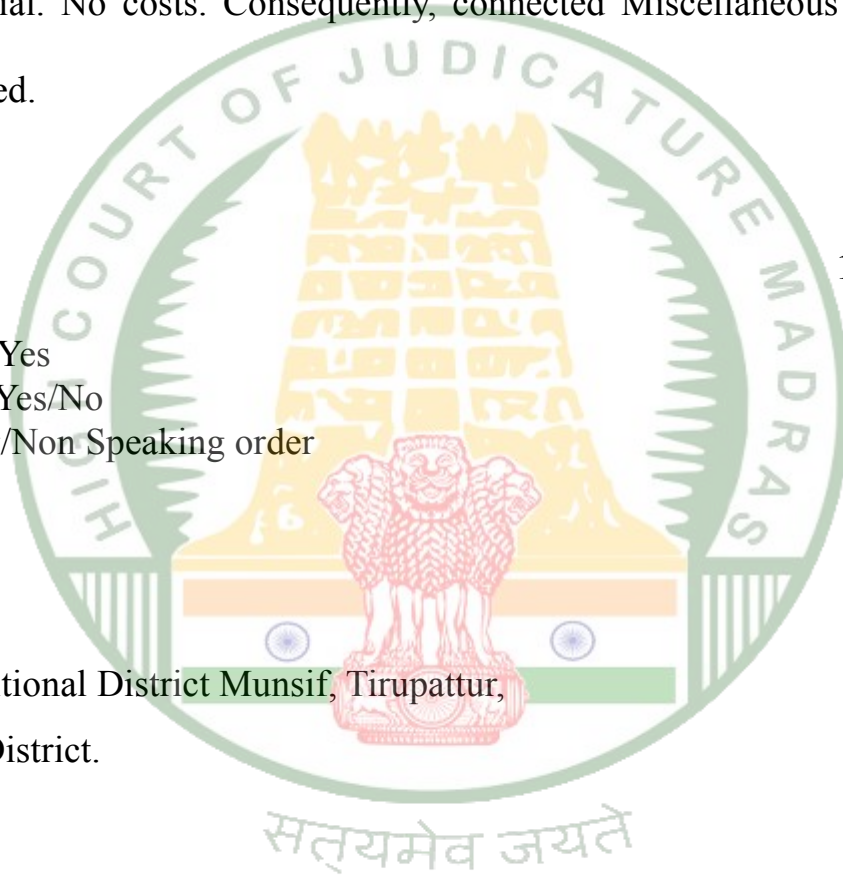
9. In view of the above, I do not find any illegality or irregularity

with the order of the Trial Court. Hence, this Civil Revision Petition fails, and is accordingly dismissed. It is made clear that it is open to the defendant to explain the admission made by her in paragraph 9 of the written statement during trial. No costs. Consequently, connected Miscellaneous Petition is also closed.

17-08-2020

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
dna

To
The Additional District Munsif, Tirupattur,
Vellore District.



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R.SUBRAMANIAN, J.
dna



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