

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.119 of 2018 and
CMP No.656 of 2018

A.Seramani

... Petitioner

Vs.

1. The Commissioner,
Mannargudi Municipality,
Mannargudi.

2. The Zonal Director,
Municipal Administration,
Thanjavur.

3. The District collector,
Tiruvarur.

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.142 of 2017 in O.S.No.112 of 2015 passed by the District Munsif Court, Mannargudi, dated 30.08.2017.

For Petitioner : Mr.A.Mohamed Ismail

For Respondents : Mr.Y.T.Aravind Gosh,
Additional Government Pleader
(for R2 & R3)

ORDER

This revision has been filed by the plaintiff in O.S.No.112 of 2015 challenging an order dismissing his application for amendment in I.A.No.142 of 2017.

2. Though the suit in O.S.No.112 of 2015 has been filed against the respondents herein, the relief of permanent injunction was sought for only against the 1st respondent namely the Commissioner, Mannargudi Municipality, Mannargudi. The injunction sought for is also only a permanent injunction, restraining the 1st respondent from evicting the petitioner except under due process of law. It is the case of the petitioner that he is in permissive possession of the property and since he was allowed to maintain the park therein.

3. The suit is being resisted by the respondents on various contentions. Pending suit, the petitioner filed an application in I.A.No.142 of 2017, seeking to amend the plaint by introducing the boundaries of the suit property, since it was omitted to be included in the original plaint. The said application was dismissed by the trial Court on the ground that the

petitioner has not furnished any proof that the suit property within the four boundaries given by the petitioner. The learned trial Judge also concluded that the respondents have contended that the Trichy Vedharanyam main road is situate on one side, and therefore the boundary description given by the petitioner is wrong. Aggrieved, the petitioner/plaintiff has come up with this Civil Revision petition.

4. I have heard Mr.A.Mohamed Ismail, learned counsel appearing for the petitioner and Mr.Y.T.Aravind Gosh, learned Additional Government Pleader appearing for R2 & R3. The 1st respondent though served, is not appearing in person or through counsel duly instructed.

5. The trial Court had rejected the amendment on the ground that the petitioner has not provided proof of his claim that the suit property is situate within the four boundaries described by him. I do not think this approach of the trial Court is correct. After all, the trial Court was hearing only an application for amendment. It cannot go in to the merits of the rival claims, at the time when it hears the amendment application. The plaintiff has given the extent in square feet as well as the linear measurements of the property in the original plaint. He, now, wants to introduce that the

boundaries to the schedule of property alone. No other allegation is made. The amendment is a pretrial amendment. Therefore, the trial Court was not right in concluding that the plaintiff has not proved the boundaries, even at the time of hearing of the amendment application. The trial Court has also gone one step ahead and said that the respondents have stated that there is a Tiruchy Vedharanyam main road on one side of the property which has not been included. Here again, the trial Court has committed the same mistake of going into the merits of the claim.

6. Therefore, I am unable to agree with the said findings of the trial Court. The scope of an amendment application is very limited. The Court has to see only whether the amendment would result in alteration of the nature of the suit or the cause of action, particularly, when the amendment sought is a pretrial amendment. Therefore, the order of the trial Court is liable to be set aside and it is accordingly set aside. The Civil Revision petition is allowed and I.A.No.142 of 2017 in O.S.No.112 of 2015 on the file of the District Munsif Court, Mannargudi will stand allowed. The plaintiff to take steps to amend the plaint and file amended copies of the plaint within a period of four weeks from the date of receipt of a copy of

this order. On filing of the amended copy, the respondents will have a right to file additional written statement. No costs. Consequently, connected miscellaneous petition is closed.

04.09.2020

Note: Time bound order

vum

Index: Yes/No

Speaking order / Non speaking order

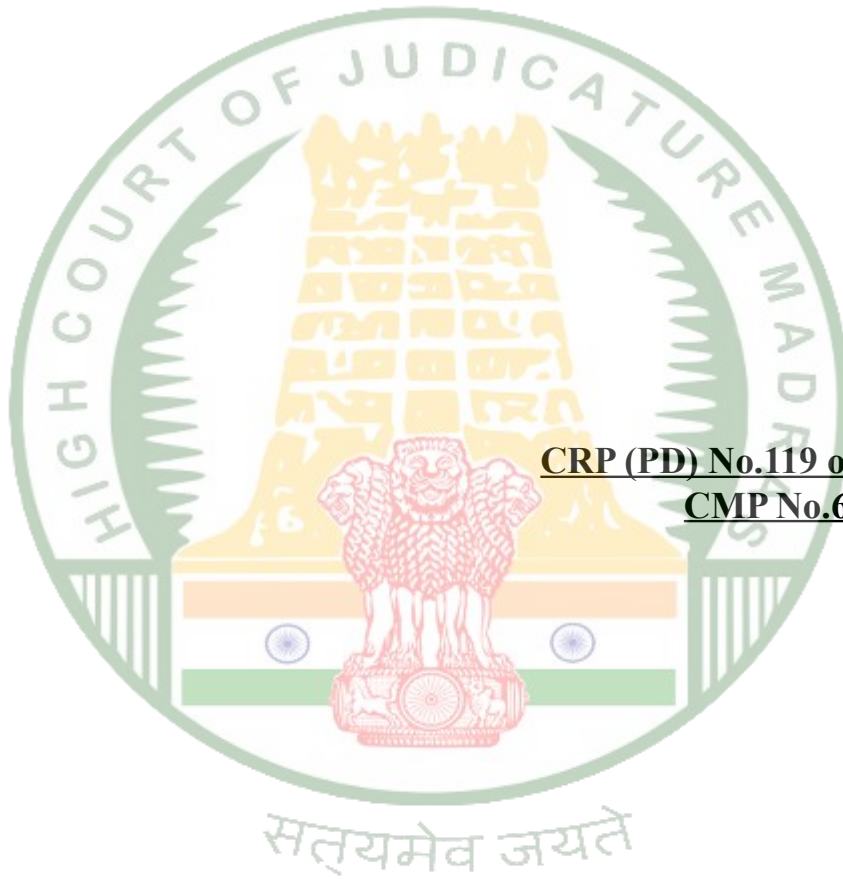
To

1. The Commissioner,
Mannargudi Municipality,
Mannargudi.
2. The Zonal Director,
Municipal Administration,
Thanjavur.
3. The District collector,
Tiruvarur.

WEB COPY

R.SUBRAMANIAN, J.

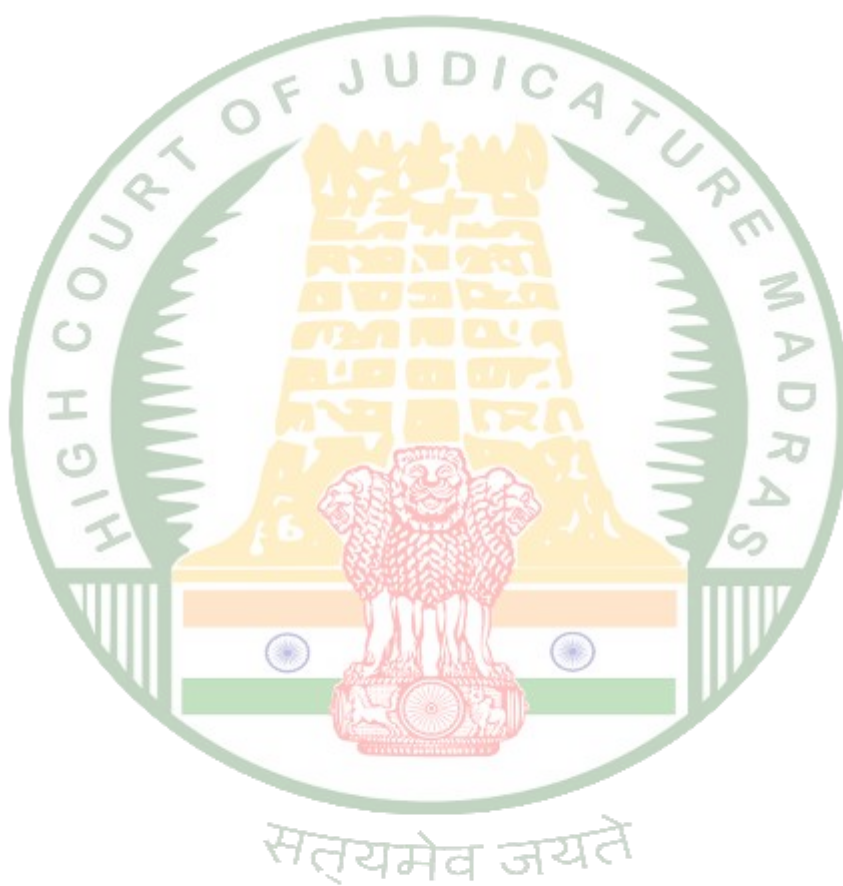
vum



CRP (PD) No.119 of 2018 and
CMP No.656 of 2018

WEB COPY

04-09-2020



WEB COPY