

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).Nos.2901 & 2902 of 2015
and
M.P.No.1 of 2015

1.Stalin
2.Dhanalakshmi

... Petitioners in
both C.R.Ps.

Vs.

Ammapillai

... Respondent in
both C.R.Ps.

Prayer in C.R.P (PD) No2901 of 2015: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 04.12.2014 passed in I.A.No.487 of 2014 in O.S.No.110 of 2013 on the file of the District Munsif's Court, Mannargudi.

Prayer in C.R.P (PD) No2902 of 2015: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 12.12.2014 passed in I.A.No.487 of 2014 in

O.S.No.110 of 2013 on the file of the District Munsif's Court,
Mannargudi.

For Petitioners : Mr.T.Sezhian
(in both C.R.Ps)

For Respondents : M/s.P.T.Ramadevi

COMMON ORDER

These Civil Revision Petitions have been filed against the order passed by the District Munsif, Mannarkudi, in I.A.No.487 of 2014 in O.S.No.110 of 2013 dated 04.12.2014 and 12.12.2014, respectively.

2.The respondent herein had filed an application in I.A.No.487 of 2014 in O.S.No.110 of 2013 under Order I Rule 10 of CPC to implead the 2nd petitioner herein as the 2nd defendant in the said suit. The learned District Munsif had passed an order dated 04.12.2014, that the said application will be allowed on payment of cost of Rs.300/- to the first respondent on or before 11.12.2004, failing which, the said application will be dismissed and posted the said Application for further orders on 12.12.2014. As against the said order, the respondents therein have filed the Civil Revision Petition in C.R.P.No.2901 of 2015. On 12.12.2014 since the petitioners herein refused to receive the cost, the respondent

had deposited the said cost before the Court and after recording the same, the learned District Munsif had allowed the said application. As against the said order, the respondents therein have filed the Civil Revision Petition in CRP.No.2902 of 2015.

3.Heard Mr.T.Sezhian, the learned counsel for the petitioners and M/s.P.T.Ramadevi, the learned counsel for the respondent.

4.The learned counsel for the petitioners has submitted that the respondent herein had filed a suit in O.S.No.110 of 2013 on the file of the District Munsif, Mannarkudi against the first petitioner herein for the relief of declaration of his title over the suit property and for delivery of possession of the said property. He further submitted that the petitioners herein have filed a suit in O.S.No.105 of 2013 on the file of the District Munsif, Mannarkudi for the relief of declaration of the title over the suit property and for permanent injunction to restrain the respondent herein from interfering with the possession and peaceful enjoyment of the property and he further submitted that the learned Trial Court had taken up both the suits for joint trial and two witness were examined as P.Ws. 1 and 2 and when the said suits were posted for cross examination of

P.W.2, the respondent herein had filed an application in I.A.No.487 of 2014 to implead the 2nd petitioner herein as 2nd defendant. He further submitted that before filing of the suit, the respondent had issued a notice on 22.07.2013 to the first petitioner herein and to that notice, the first petitioner herein had sent a reply notice dated 31.07.2013, stating that his mother namely Dhanalakshmi (2nd petitioner) herein is in possession of the suit property. But the respondent had purposely filed the suit against the first petitioner alone. He further submitted that the first petitioner after entering appearance in the said suit had filed written statement and in the said written statement also, he had categorically stated that his mother (2nd petitioner herein) is in possession of the suit property for more than 31 years and thereby perfected the title over the suit property. He further submitted that the 1st petitioner also being the son of 2nd petitioner, he is also in possession of the suit property along with the 2nd petitioner and even thereafter, the respondent has not immediately taken steps to implead the 2nd petitioner as 2nd defendant. He further submitted that when the suit was in part heard stage, with a view to delay the proceedings, the respondent had filed an Application in I.A.No.487 of 2014 to implead the 2nd petitioner as 2nd defendant without assigning reasons for filing the said application belatedly.

5.He further submitted that already the suit against the first petitioner is barred by limitation and in the said suit, if the 2nd petitioner is added as 2nd defendant, that would cause prejudice to both the petitioners and without considering the aforesaid facts, the learned Trial Court has allowed the said application and therefore he prayed to allow this Civil Revision Petition and set aside the order passed by the Trial Court in I.A.No.417 of 2014, and dismiss the said application.

6.Per contra, the learned counsel for the respondent has submitted that since already the petitioners herein had filed a suit in O.S.No.105 of 2013 against the respondent herein to declare their title over the suit property by adverse possession and also for permanent injunction and subsequently, the respondent had filed a suit for declaration of title and for delivery of possession of the property in O.S.No.110 of 2013, the Trial Court had passed an order on 02.09.2014 for joint trial of both the suits. He further submitted that since the 2nd petitioner is a party in O.S.No.105 of 2013, if she is added as a defendant in the suit in O.S.No.110 of 2013, that would not cause prejudice to her. He further submitted that in filing applications under Order I Rule 10 of CPC, no limitation is prescribed and taking into consideration of the said facts, the

Trial Court has rightly passed a conditional order stating that the said application will be allowed on payment of cost of Rs.300/- to the first petitioner herein and in obedience to the said order, the respondent also made an attempt to pay the cost to the first petitioner, but he refused to receive the same and hence, he deposited the amount before the Trial Court and after considering the same, the Trial Court had allowed the said application. He further submitted that since the petitioners have claimed title over the suit property by adverse possession in their suit in O.S.No.105 of 2013, the 2nd petitioner is a necessary party for deciding the suit in O.S.No.110 of 2013 and therefore, in the order passed by the Trial Court, this Court need not interfere and therefore, he prayed to dismiss the Civil Revision Petition.

7.A perusal of the typed set of papers filed by the petitioners shows that the petitioners herein had filed a suit in O.S.No.105 of 2013 on the file of District Munsif, Mannarkudi against the respondent herein to declare the title over the suit property by adverse possession and for permanent injunction. Thereafter, the respondent herein had filed a suit in O.S.No.110 of 2013 before the same Court against the first petitioner herein alone to declare his title over the suit property and delivery of the

possession of the suit property. The Trial Court had taken up both the suits for joint trial and two witnesses were examined as P.W.1 and P.W.2 and when the suit was posted for cross examination of P.W.1, the respondent herein had filed an application in I.A.No.487 of 2014 to implead the 2nd petitioner herein as 2nd defendant in the suit in O.S.No.110 of 2013.

8.As already pointed out that, even before filing of the suit in O.S.No.110 of 2013, the petitioners herein had filed a suit in O.S.No.105 of 2013 claiming title over the suit property by adverse possession and that being so, the respondent, should have filed the suit against both the petitioners herein but he had filed a suit against the first petitioner alone. The first petitioner in the written statement also had stated that his mother had acquired title by adverse possession. Thereafter also, the respondent had immediately taken steps to implead the 2nd petitioner as the 2nd defendant in the suit. However, it is to be pointed out that the petitioners herein had filed a suit in O.S.No.105 of 2013 seeking the relief of declaration of title by adverse possession and permanent injunction. If the 2nd petitioner is added as a party in O.S.No.110 of 2013, that would not cause any prejudice to her. After impleading her in

the suit, she can defend the said suit also by filing written statement. The Trial Court had directed the respondent herein to pay a sum of Rs.300/- to the first respondent. As the said cost is very meagre, the said cost has to be enhanced.

9.In the result, this Civil Revision Petition is allowed with a direction that I.A.No.487 of 2014 will be allowed on payment of cost of Rs.4,000/- (Rupees Four Thousand only) to the petitioners herein either directly or through their counsel who appeared before the Trial Court, within three weeks from the date of receipt of a copy of this order. If the respondent complies with the aforesaid conditions within the aforesaid period, the Trial Court is directed to allow the application in I.A.No.487 of 2014 and after amending the plaint, an opportunity shall be given to the 2nd petitioner herein for filing written statement and to the first petitioner herein for filing additional written statement, if any and thereafter dispose of the suit in accordance with law. Consequently, connected Miscellaneous Petition is closed.

02.12.2020

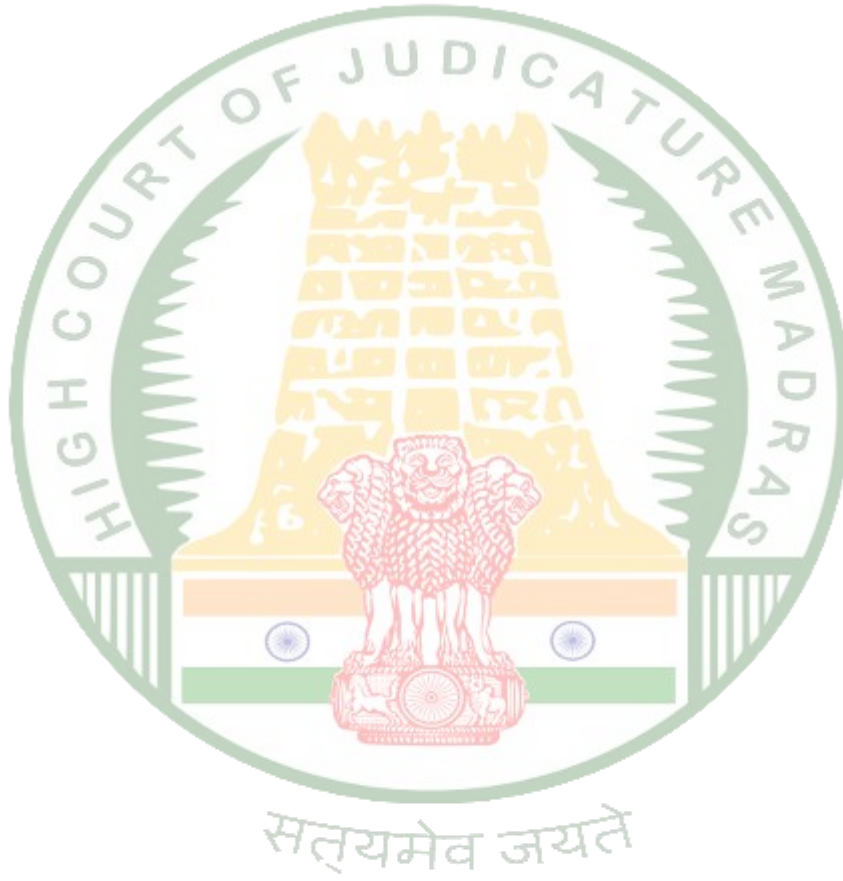
Index :Yes/No

Internet : Yes/No

jas

To

The District Munsif's Court,
Mannargudi.

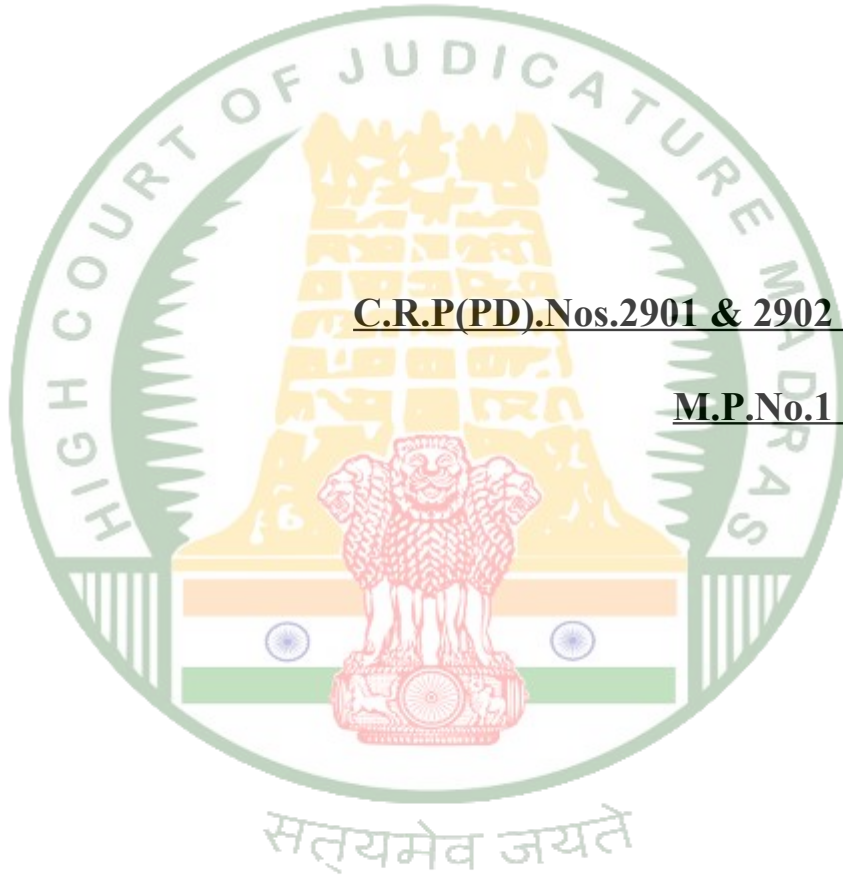


WEB COPY

CRP (PD).Nos.2901 & 2902 of 2015

P.RAJAMANICKAM.J.,

jas



C.R.P(PD).Nos.2901 & 2902 of 2015
and
M.P.No.1 of 2015

WEB COPY

02.12.2020