

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.10.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRP (PD) No.2992 of 2015

and

MP.Nos.1 and 2 of 2015

Ravikumar

.. Petitioner /Appellant

vs.

1.Pon Venkatachalam

2.S.Joseph

3.P.Elango

.. Respondents/Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 17.02.2015 passed in unnumbered I.A.No.... 2014 in A.S.No.7 of 2014 on the file of the Subordinate Judge, Sankari and consequently, allow the same.

For Petitioner

... Mr.T.Saikrishnan
for M/s.Sai Bharath and Ilan

For Respondents

... M/s.Ponmani (for R3)
for M/s.T.Murugamanickam
Senior Advocate

ORDER

This Civil Revision Petition has been filed against the rejection of the petition filed by the petitioner/plaint under Order 6 Rule 17 and Section 151 of CPC to amend the plaint in Un-numbered I.A.No.....of 2014 in A.S.No.7 of 2014 on the file of the Sub-Judge, Sankari dated 17.02.2015.

2. The petitioner herein has filed a suit in O.S.No.75 of 2010 on the file of the District Munsif, Sankari, to restrain the respondents herein/defendants therein from interfering with his peaceful possession and enjoyment of the suit property.

3. The learned District Munsif by the judgment dated 15.04.2014 has dismissed the said suit with costs. Feeling aggrieved, the petitioner herein has filed an appeal in A.S.No.7 of 2014 on the file of the Sub-Judge, Sankari and during pendency of the said appeal, the petitioner herein has filed an application under Order 6 Rule 17 and Section 151 of CPC seeking permission of the appellate court to amend the plaint. The learned Sub-Judge by the order dated 17.02.2015 has

rejected the said application without numbering. Feeling aggrieved, the petitioner/plaintiff /appellant has filed the present Civil Revision Petition.

4. Though notice was served on the respondents 1 and 2 and their names also printed in the cause-list, they have not appeared either in person or through counsel.

5. Heard Mr.T.Saikrishnan, learned counsel for the petitioner and Ms.Ponmani for Ms.Zeenath Begam, the learned counsel for the third respondent.

6. The learned counsel for the petitioner has submitted that the petitioner has filed the suit stating that the suit property originally belonged to his father (first defendant) by virtue of the patta granted by the Government and subsequently, he sold the said property to him orally. Considering the relationship, he did not get any sale deed. He further submitted that in pursuance of the said sale, the possession of the said property has been given to the petitioner and when the defendants were trying to dispossess him, he filed the above suit for

bare injunction, but the learned District Munsif has dismissed the said suit without appreciating the oral and documentary evidence adduced by the petitioner. He further submitted that as against the said dismissal of the suit, the petitioner has filed an appeal before the Sub-Court, Sankari in AS.No.7 of 2014 and during pendency of the said appeal only, he came to know that the property was the ancestral property and as such, he is also having right over the said property and hence, he filed a petition before the appellate court seeking permission to amend the plaint, but the learned Sub-Judge straightaway rejected the said petition stating that if the said petition is allowed at the appellate stage, then the original suit has to be decided afresh. He further submitted that an appeal is continuation of the suit only and as such, the appellate court should not have rejected the petition even without numbering and therefore he requests to remit the matter back to the first appellate court directing the said court to number the said petition and after giving opportunities to both the parties, the petition may be disposed of in accordance with the law.

7. Per contra, the learned counsel for the third respondent has submitted that the suit property originally belonged to the first

defendant by virtue of a patta granted by the Government. She further submitted that the first defendant has executed a power of attorney to the second defendant and that the second defendant sold the suit property to the 3rd respondent/3rd defendant through a registered sale deed dated 26.11.2009 for valuable consideration and also handed over possession. She further submitted that the petitioner has categorically admitted in his plaint that the suit property absolutely belonged to the first defendant by virtue of patta granted by the Government and that being so, he cannot take the plea that the said property is the ancestral property. She further submitted that the petitioner is estopped from taking contra plea. She further submitted that if the proposed amendment is allowed, that would cause prejudice to the third respondent and taking into consideration the aforesaid facts, the appellate court has rightly rejected the petitioner's petition and in the said order, this court need not interfere and therefore, she prayed to dismiss this petition.

8. The learned counsel for the petitioner by way of reply has submitted that an admission is not a conclusive proof and the person who made admission is entitled to prove that the said admission has been made erroneously and therefore he prayed to remand the matter

to enable the petitioner to produce materials to substantiate his case.

9. A perusal of the records shows that the learned Appellate Court Judge without numbering the petition and also without hearing the respondents, has straight away rejected the amendment petition filed by the petitioner/appellant on the ground that if the amendment is allowed at the appellate stage, then the original suit has to be decided afresh. It has not expressed any view that in this case, the principle of estoppel will apply. As contended by the learned counsel for the petitioner, appeal is continuation of the suit. Further, considering the contention of the learned counsel for the petitioner that the petitioner is having materials to prove that he has made admission erroneously, this court is of the view that this matter has to be remitted back to the appellate court to number the said petition and dispose of the same after hearing both sides in accordance with law.

10. In the result, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petitions are closed. The order passed by the appellate court in unnumbered IA.No.....of 2014 is set aside and the matter is remitted back to the appellate court. The appellate court is directed to number the said petition and dispose of

the same after giving opportunities to both parties, in accordance with law. No costs.

07.10.2020

Index: Yes/No
Speaking/Non-speaking Order

gv

To

The Subordinate Judge,

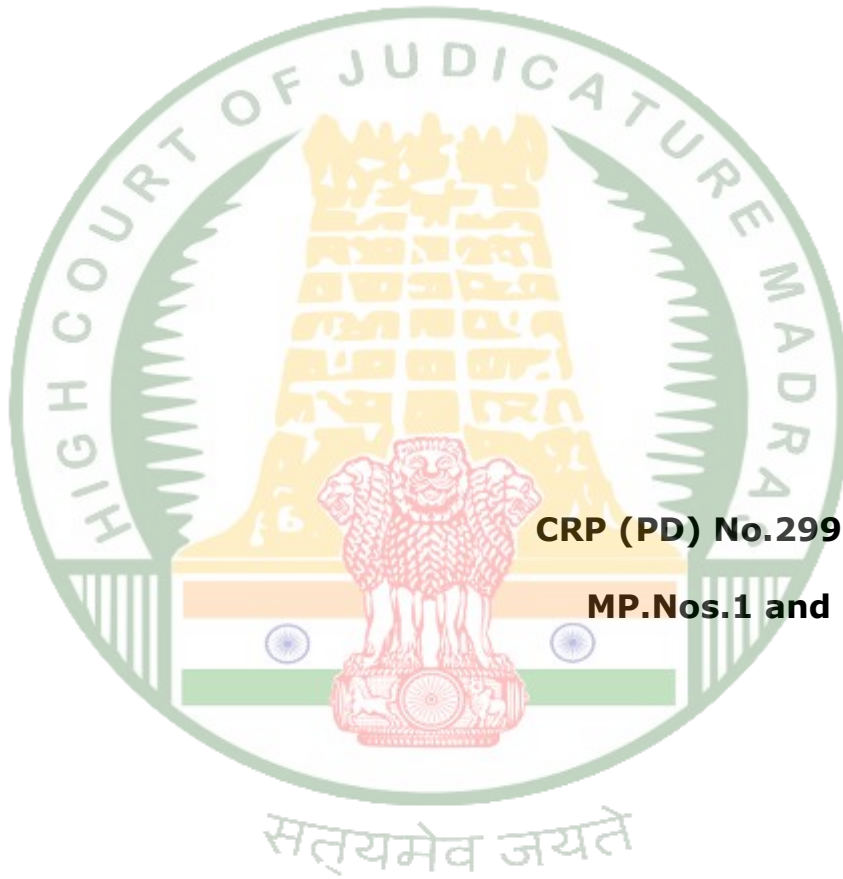
Sankari .



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P.RAJAMANICKAM., J.

gv



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