

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (PD) No.1501 of 2013
and M.P.No.1 of 2013

Parvathamma

..Petitioner/Plaintiff

Vs

1.Erramma

2.Abbanna

..Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order made in I.A.No.415 of 2012 in O.S.No.165 of 2006 dated 19.12.2012 on the file of the District Munsif cum Judicial Magistrate Court, Denkanikottai.

For Petitioner : Mr.P.Mani

For Respondents : No Appearance

ORDER

The petitioner is the plaintiff in O.S.No.165 of 2006. The suit has been

filed for the relief of bare injunction in respect of the suit A schedule property. Subsequently, the petitioner has filed an application in I.A.No.84 of 2010 to amend the plaint for alternative prayer in respect of B schedule properties and for partition regarding the schedule properties. Though the said petition was dismissed, the petitioner preferred a revision before this Court and the same was allowed by this Court. Subsequently, the petitioner has filed another application in I.A.No.415 of 2012 to amend the plaint by including the boundaries in the B schedule properties stating that earlier, while amending the B schedule properties, boundaries were not mentioned. Therefore, he wanted to include the boundaries in the B schedule properties and the said petition was dismissed by the trial Court. Challenging the said dismissal order, the petitioner is before this Court.

2. Though notice has been served to the respondents and their names have been printed in the cause list, none appeared on behalf of the respondents.

3. Heard the learned counsel appearing for the petitioner and also perused the materials available on record.

4. The learned counsel for the petitioner submitted that originally, the suit in O.S.No.165 of 2006 has been filed by the petitioner for bare injunction in respect of the A schedule property. Subsequently, he has filed an application in I.A.No.84 of 2010 to amend the prayer for the alternative relief of partition in respect of the B schedule properties. Though the said petition was dismissed, challenging that order, a revision was filed before this Court. This Court also allowed the said revision petition. After noticing that in the earlier amendment application, boundaries for the B schedule properties have not been mentioned, the petitioner filed another application in I.A.No.415 of 2012 before the trial Court. But, the trial Court has failed to consider the said amendment petition and simply dismissed it on the ground that the petitioner has introduced a new cause of action. The nature of amendment sought for do not change the nature and character of the suit as the petitioner/plaintiff wants to include the boundaries for the B schedule properties and therefore, without mentioning the boundaries to the B schedule properties, if the suit is allowed and a preliminary decree is passed and even while passing a final decree, it is very difficult to identify the suit properties at the time of execution. Therefore, challenging the said dismissal order passed in I.A.No.415 of 2012, the petitioner is before this court, by way of this civil revision petition.

5. Admittedly, the petitioner has filed a suit for bare injunction and subsequently, he also filed an application in I.A.No.84 of 2010 to amend the schedule properties. The said amendment application was dismissed by the trial Court. Challenging the dismissal order passed by the trial Court, the petitioner has filed a revision before this Court and this Court had allowed the said revision. Thereafter, the petitioner filed an application in I.A.No.415 of 2012 to amend the plaint in respect of B schedule properties with boundaries. The suit has been filed in the year 2006. However, the petitioner filed the earlier amendment application to amend the plaint and the same was dismissed in the year 2010 and against the said dismissal order, a revision was filed and the same was disposed of in the year 2011. Subsequently, he filed another application in I.A.No.415 of 2012 since the amendment seeking to include the boundaries to the B schedule properties. Further, he has filed the suit in the year 2006 and the application to amend the plaint in I.A.No.415 of 2012 has been filed in the year 2012, i.e after 8 years. Further, after the commencement of the trial, the petitioner has filed the amendment application. If the application for amendment is allowed, it will not introduce a new cause of action. Though the amendment application filed only to include the boundaries, the application has been filed belatedly after the commencement

of the trial. Therefore, the present revision is allowed on the following conditions:

i) The petitioner is directed to pay a sum of Rs.1,00,000/- (Rupees one lakh only) to the respondents within a period of ten days from the date of receipt of a copy of this order, for the inconvenience caused to the respondents.

ii) After payment of the cost to the respondents, the petitioner is directed to file a memo on 11.09.2020 for compliance, failing which the revision petition shall stand automatically dismissed without any further reference.

6. The Civil Revision Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order

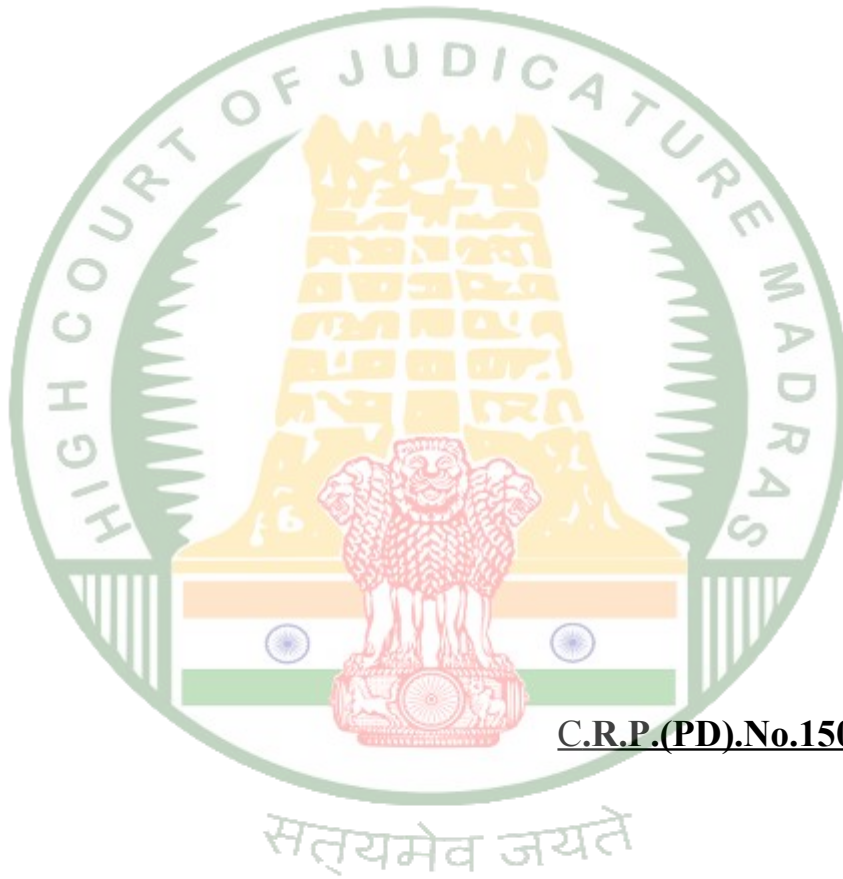
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1. The District Munsif cum Judicial Magistrate, Denkanikottai.

2. The Section Officer, V.R.Section, High Court, Madras.
- 3.

P.VELMURUGAN, J.

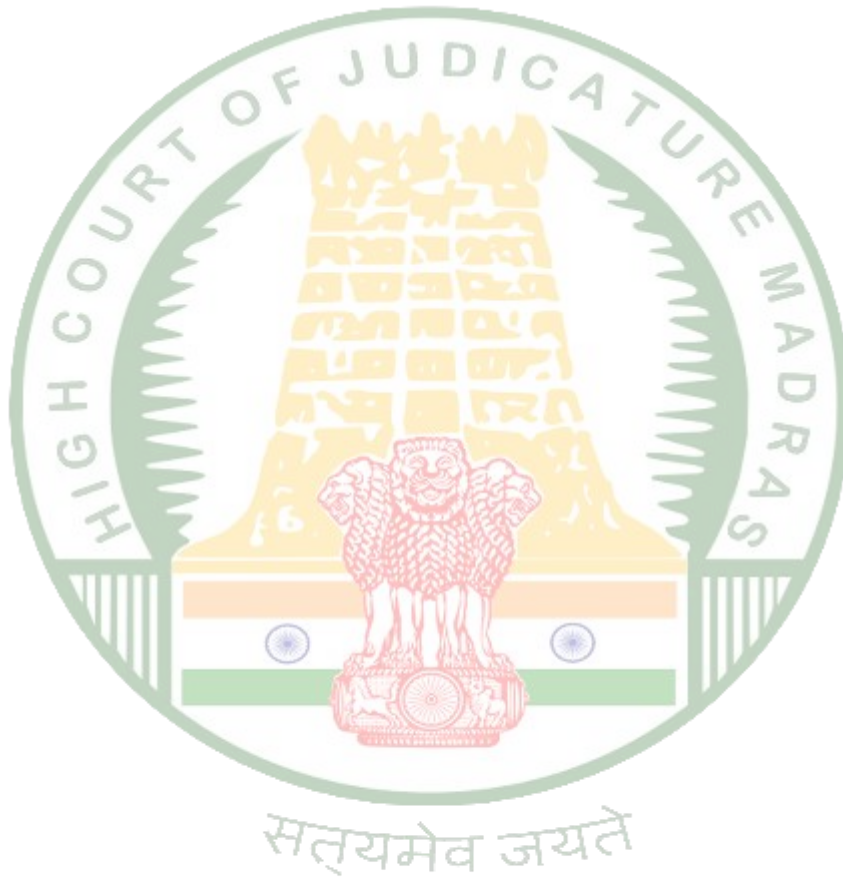
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