

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PDs 783 & 784 of 2019

and

C.M.P. 5164 of 2019

1. S.Punitha
2. S.Ramya
3. S.Sivasankari

... Petitioners
in both C.R.P.s

Vs.

1. R.Indhirani
2. B.Rajakannu
3. N.Geetha
4. R.Radhika
5. S.Santhi
6. S.Rajkumar

... Respondents
in both C.R.P.s

Prayer in C.R.P. 783 of 2019 :- This Civil Revision Petition has been filed under Art.227 of Constitution of India, praying to set aside the fair and final order of Principal District Munsif Court, Kallakurichi, dated 29.06.2018 made in I.A. No.1148/2017 in O.S. 935 of 2004.

Prayer in C.R.P. 784 of 2019 :- This Civil Revision Petition has been filed under Art.227 of Constitution of India, praying to set

aside the fair and final order of Principal District Munsif Court, Kallakurichi, dated 29.06.2018 made in I.A. No.1147/2017 in O.S. 935 of 2004.

For Petitioners : Mr.S.Sounthar

For Respondents : Mr.Udayakumar

COMMON ORDER

These Civil Revision Petitions have been filed against the order allowing the applications filed by the respondents under Sec.152 and 153 of C.P.C. to amend the plaint, preliminary decree in I.A.1147 of 2017 and also to amend the description of the property in a final decree proceedings.

2. Today, when the matter was taken up for hearing, Mr.S.Sounthar, learned counsel appearing for petitioners filed a memo stating that, pending Civil Revision Petition, the 1st respondent died leaving 2nd respondent, her husband as her legal representative. Hence, the 2nd respondent has to be brought on record as legal representative of 1st respondent. Accordingly, the memo has been recorded.

3. The respondents 1 and 2 have filed a suit for partition in O.S. 935 of 2004, on the file of Principal District Munsif, Kallakurichi seeking for partition. In the above Suit, preliminary decree came to be passed. Challenging the judgment and decree, an appeal has been filed in A.S. 98 of 2008 on the file of III Addl. District Court, Kallakurichi, and the same is pending. In the meantime, the respondents have filed an application for passing a final decree, which is also pending before the Principal District Munsif, Kallakurichi. While being so, the petitioners, who are defendants 1, 4 and 6 filed an application under Sec.152 and 153 of C.P.C. to amend the schedule of property, and also to amend preliminary decree. The petitioners have also filed another application to amend the schedule in the final decree proceedings. The learned Principal District Munsif has allowed all the applications. Challenging the same, the present Civil Revision Petitions have been filed.

4. Mr.S.Sounthar, learned counsel appearing for petitioners would contend that, an application filed under Sec.152 and 153 of C.P.C. is not at all maintainable. Under Sec.152 of C.P.C., only a clerical and arithmetical error can be corrected. To amend the

schedule of property as well as the preliminary decree, the applications filed by the respondents are not at all maintainable, especially, when the appeal is pending against the preliminary decree before the appellate court. That apart, even to amend the schedule in the final decree, the application has to be filed in the main suit, not in the final decree application.

5. Mr. S.Udayakumar, learned counsel appearing for respondents would submit that, since some error found place in the survey number, and the extent of property regarding item Nos.2,9,12 of the suit property, they have filed the above applications. They are only intended to amend the plaint, and the decree by quoting the wrong provision of law. Considering all those circumstances, the Trial Court has rightly allowed the applications to meet the ends of justice. Hence, there is no error found in the order passed by the Trial Court.

6. I have heard and considered the submissions made by learned counsel appearing for petitioners as well as learned counsel appearing for respondents, and perused the materials available on record carefully.

7. Admittedly, a preliminary decree has been passed in the suit as early as in the year 2008. Challenging the judgment and decree, an appeal is also pending. In the above circumstances, if at all, any discrepancy in the suit schedule property, the only remedy available to the respondents is to file necessary application under Order 6 Rule 17 of C.P.C. before the appropriate forum viz., the first appellate court. The respondents cannot maintain an application under Sec.152 and 153 of C.P.C. before the Trial Court. But, the learned Principal District Munsif, Kallakurichi without considering the same, has erroneously allowed the applications. Therefore, I am of the considered opinion that, the orders passed by learned Principal District Munsif, Kallakurichi in I.A. 1147 and 1148 of 2017 in O.S. 935 of 2004, dated 29.06.2018 are liable to be set aside. Accordingly, the same are set aside. However, if the respondents want to amend the schedule of property in the plaint, it is always open to them to file appropriate application in the manner known to law.

8. In the result, these Civil Revision Petitions are allowed.
No costs. Consequently, the connected Civil Miscellaneous
Petition is closed.

02.01.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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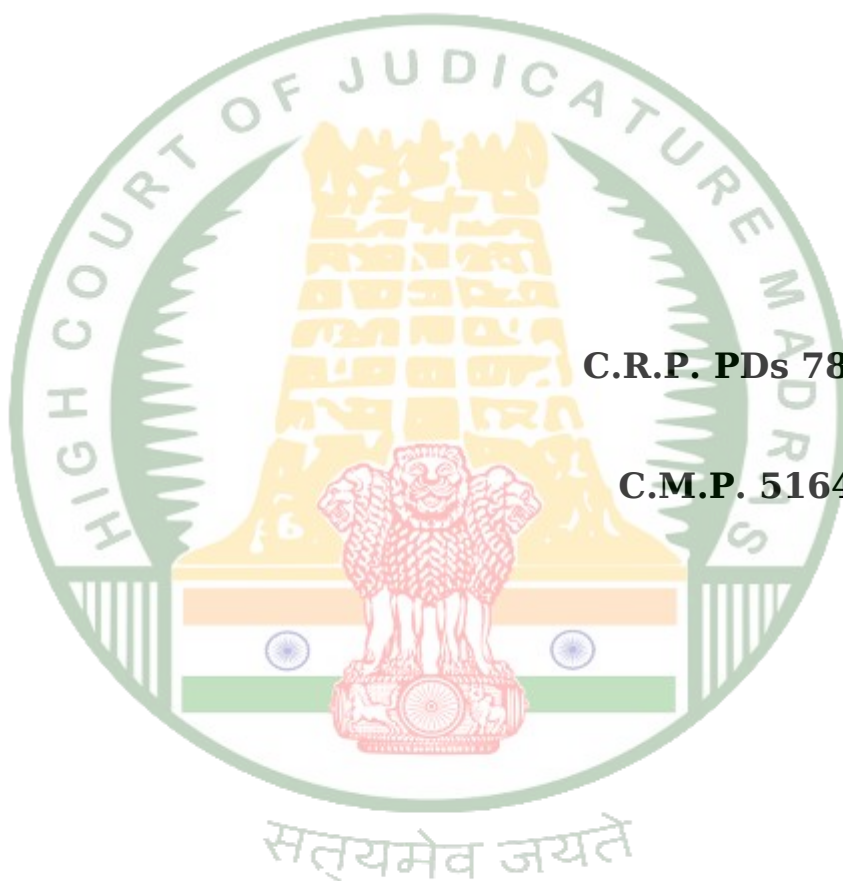
Principal District Judge,
Kallakurichi.



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V.BHARATHIDASAN,J.

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