

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.RP.Nos. 152 & 153 of 2018
and
C.M.P.No. 894 of 2018

1.Thozhan
2.Madhavi
3.Kannagi
4.Amutha

...Petitioners in both CRPs

Vs.

1.M.Latha

2.The District Collector,
Vellore District,
Sathuvachari, Vellore - 9.

3.The District Revenue Officer,
Vellore district, Sathuvachari,
Vellore - 9.

4.The Tahsildhar,
Walaja Taluk, Walajapet.

5.Nedunchezhiyan

...Respondents in both CRPs

Prayer in both CRPs: Civil Revision Petition under Article 227 of the Constitution of India, against the order of allowing in I.A.Nos. 68 & 69 of 2017 in O.S.No.28 of 2012 dated 05.12.2017 passed by the learned District Munsif at Ranipet, Vellore District.

For Petitioners in both CRPs: Mr.B.Gopalakrishnan

For Respondents in both CRPs: Mr.K.V.Ananthakrishnan

O R D E R

The defendants 4, 6, 7 and 8 in O.S.No.28 of 2012 are on revision aggrieved by the orders made in I.A.Nos. 68 & 69 of 2017, which are applications for reopening of the suit and amendment of the plaint.

2. The suit is one for declaration of the title of the

plaintiff to the B schedule property and for consequential injunction.

3. The plaintiff traced her title through settlement deed executed by her husband, who obtained the property under two different documents namely, a release deed and a sale deed. Though the extent covered by the release deed and sale deed was 2,180 Sq.ft. the plaintiff was claimed, in the original plaint itself, that her husband was in possession of 2592 Sq.ft, and he had settled the said larger extent on her. It is also not disputed that the suit property is classified as Grama Natham. After the trial was completed and the at the time of arguments, the plaintiff found that a better description of the B schedule property is necessary to dispell certain doubts that were raised by the Court. Therefore, the plaintiff came up with the applications to reopen the suit and to amend the plaint to incorporate a pleading as to how the plaintiff's husband had settled 2,592 sq.ft of land in favour of the plaintiff and to alter the description of the B schedule property so that it is specifically denotes the excess extent of 480 Sq.ft that is 27 feet East to West and 96 feet North to South together with a tiled house and compound wall situate on its eastern side of the A schedule property.

4. The plaintiff also claimed that despite the exercise of due diligence, the amendment could not be sought for earlier, since the plaintiff felt the necessity of the amendment only at the time of argument of the suit. These applications were opposed by the defendants contending that the amendment is belated and the amendment would alter the nature of the suit. The Trial Court rejected the defendants plea and concluded that the amendment is necessary for better appreciation of the case of both the parties. The Trial Court also found that the plaintiff had given valid reasons for not seeking the amendment at an earlier stage in the suit. On the said findings, the Trial Court allowed both the applications one to reopen and another to amend the plaint. Hence, the revision.

5. I have heard Mr.B.Gopalakrishnan, learned counsel for the petitioners. Mr.K.V.Ananthakrishnan for the first respondent. Mr.Aravind Gosh, learned Additional Government Pleader for R2 to R4. The 5th respondent herein namely, Nedunchezhiyan has been brought on record as legal representatives of the deceased 5th defendant in the suit namely, Valliyammal as the 9th defendant in the suit. Though the 5th respondent has been served, he has not appeared either in person or through counsel, duly instructed.

6. Mr.B.Gopalakrishnan, learned counsel for the petitioners would vehemently contend that being a post trial

amendment, the Trial Court erred in allowing the same without considering the requirements of the proviso to Order 6 Rule 17 of C.P.C. He would also contend that a completely new pleading is sought to be introduced and schedule of properties is sought to be altered.

7. Contending contra, Mr.K.V.Ananthakrushnan for the first respondent / plaintiff would submit that what is sought to be done by way of amendment is to give a proper and better description of the B schedule property and to introduce a plea justifying the possession of the extent of land by the plaintiff. These pleadings are already there and the amendment only seeks to explain the same in a better manner. As regards the amendment to the description of property, Mr.K.V.Ananthakrushnan would submit that while the original schedule gave the boundary description of the entire property the amendment seeks to describe the B schedule in better manner by giving the specific boundaries of the B schedule property. Therefore, according to Mr.K.V.Ananthakrushnan, the Trial court was justified in allowing the applications for amendment and reopen. I have considered the rival submissions.

8. After the amendment of Order 6 Rule 17 and the introduction of the proviso, there are some restrictions on the powers of the court in allowing post trial amendments but the proviso does not bar any kind of amendment whatsoever after trial. The proviso only requires the plaintiff to give sufficient cause for not seeking the amendment at an earlier stage. Even in the affidavit filed in support of the application, the plaintiff has averred the necessity to seek the amendment was realised only when the Court expressed certain difficulties at the time of arguments. The amendments sought for are also not in the nature of altering the nature of the suit or the cause of action. They are only explanatory in nature. They do not cause any surprise or the amendment does not introduce a new case by which the defendant would be prejudiced. I am therefore, of the opinion that the trial Court was justified in exercising its discretion in favour of the plaintiff and allowing the amendment as prayed for.

9. I do not see any reason to interfere with the order of the Trial Court. Hence, both the revisions fail and they are accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs. It is open to the defendants to file an additional written statement and the Trial Court is directed to proceed on merits after giving an opportunity to the parties to lead evidence, if they chose to.

Considering the fact that the suit is of the year 2012 and the trial is almost over, the Trial Court is directed to dispose

of the sut within six months from the date of resumption of normal physical hearings before the District Munsif Court, Ranipet.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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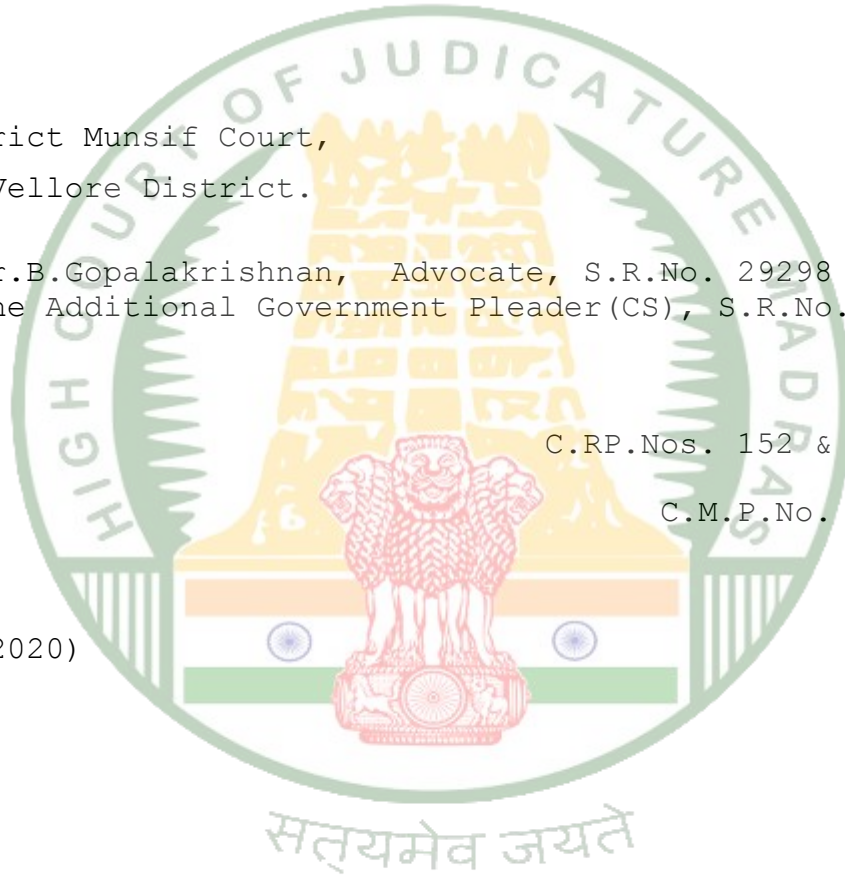
The District Munsif Court,
Ranipet, Vellore District.

+1cc to Mr.B.Gopalakrishnan, Advocate, S.R.No. 29298

+1cc to the Additional Government Pleader(CS), S.R.No. 29332

C.RP.Nos. 152 & 153 of 2018
and
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AJS (CO)
GN(15/10/2020)



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