

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.1534 of 2018 and
CMP No.8183 of 2018

R.Avinashilingam .. Petitioner

Vs.

1. Vincent
2. Joseph Loorthu Raj
3. Vijayakumar
4. Shanthi ... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the order and decretal order passed in I.A.No.65 of 2018 in O.S.No.364 of 2011 dated 08.02.2018 on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.N.Umapathi

For Respondents : No appearance

ORDER

Aggrieved by an order rejecting an application filed by the petitioner who is the 1st defendant in O.S.No.364 of 2011, seeking leave to

file additional written statement, he has come up with this revision.

2. The suit is one for partition against nearly 10 defendants. The 1st defendant had filed a written statement, contending that there was an oral partition of the properties in the year 1988 and he has been in possession of the property allotted to him under the said partition. The defendants 2 to 10, submitted to a decree for partition. They also paid Court fee and sought for a preliminary decree in their favour. After examining of the plaintiffs witness, the 1st defendant filed an instant application in I.A.No.65 of 2018 seeking leave to file additional written statement, setting out the finer details of the oral partition.

3. This application was opposed on the ground that it is belated and the evidence is completed. The trial Court agreed with the defence and dismissed the application.

4. I have heard Mr.N.Umapathi, learned counsel appearing for the petitioner. The respondents though served, are not appearing in person or

through counsel duly instructed.

5. The prohibition under Order VI Rule 17 of Code of Civil Procedure with regards to post trial amendment does not really apply to an application for filing additional written statement. The contents of the additional written statement shows that the 1st defendant only wants to elaborate and give better details of the partition that is said to have taken place in the year 1988. Even in the original written statement, he had pleaded that there was an oral partition in 1988 and the suit properties were allotted to him and he is in possession of the same, pursuant to the said partition. All that is sought to be done by way of the additional written statement is to provide better details of the said partition. No new case is sought to be projected in the additional written statement. May be, there is some delay, but that by itself will not dis-entitle the defendant from filing an additional written statement, setting out better details. The delay if any, can be compensated by payment of costs.

6. I, therefore, find that the trial Court ought not to have dismissed

the application. Hence, the Civil Revision petition is allowed. I.A.No.65 of 2018 in O.S.No.364 of 2011 on the file of the District Munsif Court, Avinashi will stand allowed, subject to the condition that the petitioner pays a sum of Rs.5,000/- (Rupees five thousand only) as costs to the counsel for the 1st respondent/plaintiff appearing before the trial Court on or before 16.10.2020. The trial Court shall receive the additional written statement on production of the receipt for payment of costs, proceed with the suit in accordance with law. There will be no order as to costs in this Civil Revision petition. Consequently, connected miscellaneous petition is closed.

04.09.2020

Note: Time Bound order

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Index: Yes/No

Speaking order / Non speaking order

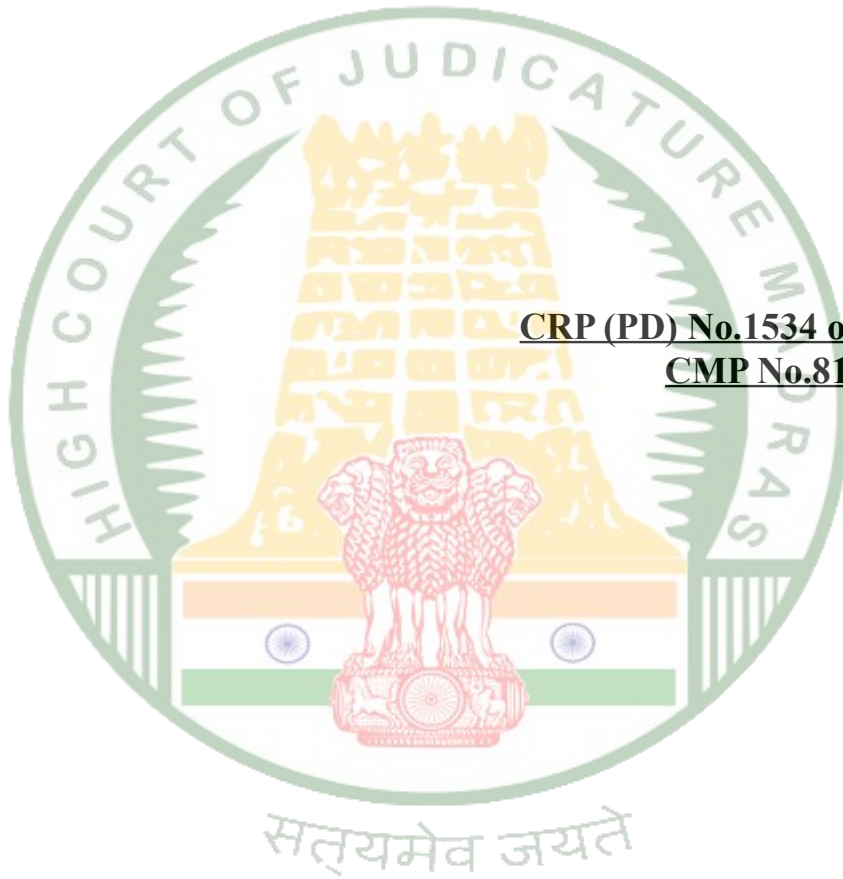
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R.SUBRAMANIAN, J.

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To

The District Munsif Court,
Avinashi.



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