

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P.(PD) Nos.1504 and 1505 of 2016 and
CMP.No.8273 of 2016

M.Chandrasekaran ... Petitioner in both CRP's

vs.

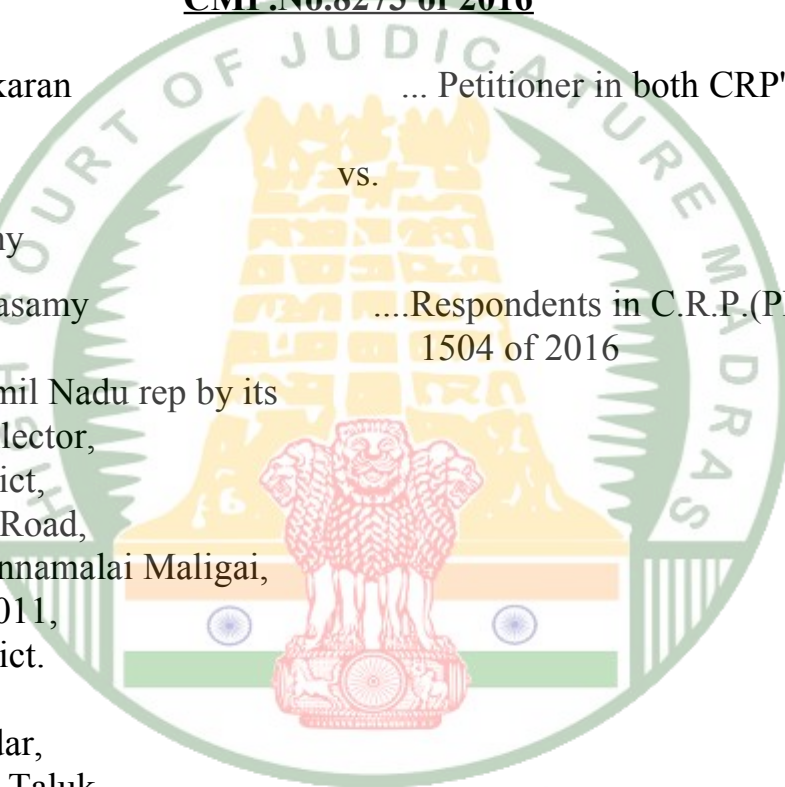
1.K.Palanisamy

2.K.PongiannasamyRespondents in C.R.P.(PD)
1504 of 2016

3. State of Tamil Nadu rep by its
District Collector,
Erode District,
Perundurai Road,
Deeran Chinnamalai Maligai,
Erode-638 011,
Erode District.

4. The Tahsildar,
Perundurai Taluk,
Perundurai-Erode Road,
Perundurai Town,
Perundurai Taluk,
Erode District.

5. The Junior Engineer,
TANGEDCO,
Nasiyanoor,
Erode Taluk.



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6. The Superintending Engineer,
TANGEDCO,
Mettur Road,
Erode,
Erode Taluk.

... Respondents in CRP(PD)NO.
1505 of 2016

Civil Revision Petitions filed under Article 227 of the Constitution of India against the Fair and Decreeal Orders dated 26.02.2016 made in I.A.Nos.247 of 2015 and 335 of 2014 in O.S.No.90 of 2013 respectively on the file of the learned District Munsif cum Judicial Magistrate, Perundurai.

For Petitioners : Mr.N.Manokaran
(in both C.R.P.'s)
For Respondents : Mr.M.Guruprasad (R1 and R2)
(in both C.R.P's) Mr.Y.T.Aravind Gosh (R3 & R4)
(in CRP.No.1505/2016) Government Advocate
Mr.S.Ramakrishnan (R5 & R6)

COMMON ORDER

As the issues involved as well as the parties in both the Civil Revision Petitions are one and the same, they are heard together and disposed of by a common order.

2. C.R.P.(PD) No.1504 of 2016 has been filed against the Order dated 26.02.2016 made in I.A.No.247 of 2015 in O.S.No.90 of 2013 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai.

3. C.R.P.(PD) No.1505 of 2016 has been filed against the Order dated 26.02.2016 made in I.A.No.335 of 2014 in O.S.No.90 of 2013 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai.

4. The petitioner herein filed a suit in O.S.No.90 of 2013 against the respondents seeking declaration and permanent injunction. Pending disposal of the suit, the petitioner filed an interlocutory application in I.A.No.247 of 2015 seeking to amend the plaint by stating that R.S.Number was omitted in the plaint schedule properties. Further another application in I.A.No.335 of 2014 was filed to implead the proposed parties viz., the respondents 3 to 6 in the suit by stating that they are the necessary parties.

5. The Trial Court vide order dated 26.02.2016 has dismissed both the interlocutory applications. Challenging the same, the above Civil Revision Petitions have been filed.

6. As far as the interlocutory application in I.A.No.247 of 2015 is concerned, the learned counsel appearing for the petitioner submitted that the R.S.Number was omitted in the plaint schedule property, which was only a typographical error. But without considering the same, the trial Court has dismissed the application for amendment. The learned counsel for the petitioner has relied upon the Judgment of the Hon'ble Supreme Court in the case of *Varun Pahwa Versus Renu Chaudhary* reported in *(2019) 15 SCC 628*, wherein it is held hereunder:

"9.In *State of Maharashtra vs. Hindustan Construction Company Limited*, this Court held as under:-

"17. Insofar as the Code of Civil Procedure, 1908 (for short "CPC") is concerned, Order 6 Rule 17 provides for amendment of pleadings. It says that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. The matters relating to amendment of pleadings have come up for consideration before

the courts from time to time. As far back as in 1884 in *Clarapede & Co. v. Commercial Union Assn.*² - an appeal that came up before the Court of Appeal, Brett M.R. stated:

“... The rule of conduct of the court in such a case is that, however negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made....”

19. In *Charan Das v. Amir Khan*³ the Privy Council expounded the legal position that although power of a Court to amend the plaint in a suit should not as a rule be exercised where the effect is to take away from the defendant a legal right which has accrued to him by lapse of time, yet there are cases in which that consideration is outweighed by the special circumstances of the case.

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22. In *Jai Jai Ram Manohar Lal* this Court was concerned with a matter wherein amendment in the

plaint was refused on the ground that the amendment could not take effect retrospectively and on the date of the amendment the action was barred by the law of limitation. It was held: (SCC p.871, para 5)

“5. Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.”

This Court further stated (Jai Jai Ram Manohar Lal case, SCC p.873, para 7):

“7. ...The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.”

10. In *Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Another*⁵, this Court held that procedural defects

and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The Court held as under:-

“17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

- (i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
- (iii) where the non-compliance or violation is proved to be deliberate or mischievous;
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.”

3. Per contra, the learned counsel appearing for the respondents have stated that the survey number has been furnished in the plaint and by way of seeking amendment, the plaintiff is trying to alter the survey number. It is further stated that the petitioner has filed the suit with the correct details and it is not that there is typographical error which is sought to be corrected and the plaintiff wants to include the survey number in the plaint schedule property, which will definitely affect the right over the title of the respondent's property in R.S.No.168/6. He further submitted that the trial Court has rightly held that the without any consistent pleadings in the petition, merely stating that the survey number was omitted by mistake is not found to be not acceptable and if any such survey number without valid proof is included as description of properties it would definitely alter the nature and character of the suit and therefore the said order need not be interfered with.

4. I find much force in the contention of the learned counsel for the respondents.

5. Having heard the learned counsel appearing on either side and on

perusing the materials on record, this Court is of the view that the Judgment relied upon by the learned counsel for the petitioner does not apply to the case on hand. It is not that the procedure that has been wrongly followed. The procedural defects is to be factually different from factual defects. In this case addition of fresh survey number would amount to alter the character of the case, which was rightly held by the trial Court. Therefore, this Court is not inclined to interfere with the same. Hence the Civil Revision Petition in C.R.P(PD). No.1504 of 2016 is dismissed.

6. In so far as the I.A.No.335 of 2014 is concerned, the learned counsel for the petitioner submitted that the revenue officials have subdivided the suit properties on the basis of the registered partition deeds executed between the owners, but they have committed an error in effecting sub division and therefore they should be added as the party defendants for proper adjudication, but the trial Court without considering the said aspect has dismissed the said application.

7. The learned counsel for the respondents submitted that knowing fully well that the well is situated in R.S.No.168/9 belonging to the first and the second defendants, the plaintiff's father obtained service connection in the well situated in his property in R.S.No.168/9 misrepresenting that

that he obtained service connection for R.S.No.168/14. The proposed parties are not the parties to decide the suit and therefore he submitted that the order passed by the trial Court is a well reasoned one and the same need not be interfered with.

8. This Court on considering the submissions of the learned counsel appearing on either side and also on perusal of the Judgment passed by the trial Court is of the view that the despite several opportunities being given to the plaintiff, he has not chosen to come forward to contest the matter and except the averments, there is no contention on behalf of the petitioner to the effect that why the proposed parties are necessary parties to the suit and further the petitioner did not appear before the trial from 07.01.2015 to 10.02.2016 which clearly shows that the petitioner did not evince any interest to contest the proceedings. On the said observations, the trial Court has rightly dismissed the application. Hence, I find no reasons to interfere with the order dated 26.12.2016. Accordingly C.R.P.(PD) No.1505 of 2016 is dismissed.

10. Since the suit is of the year 2013, the Trial Court is directed to proceed with the hearing of the Suit in **O.S.No.90 of 2013** on a day-to-day basis, without adjourning the same beyond **five working days** at any point

of time and arrive at a conclusion on merits, **as expeditiously as possible.**

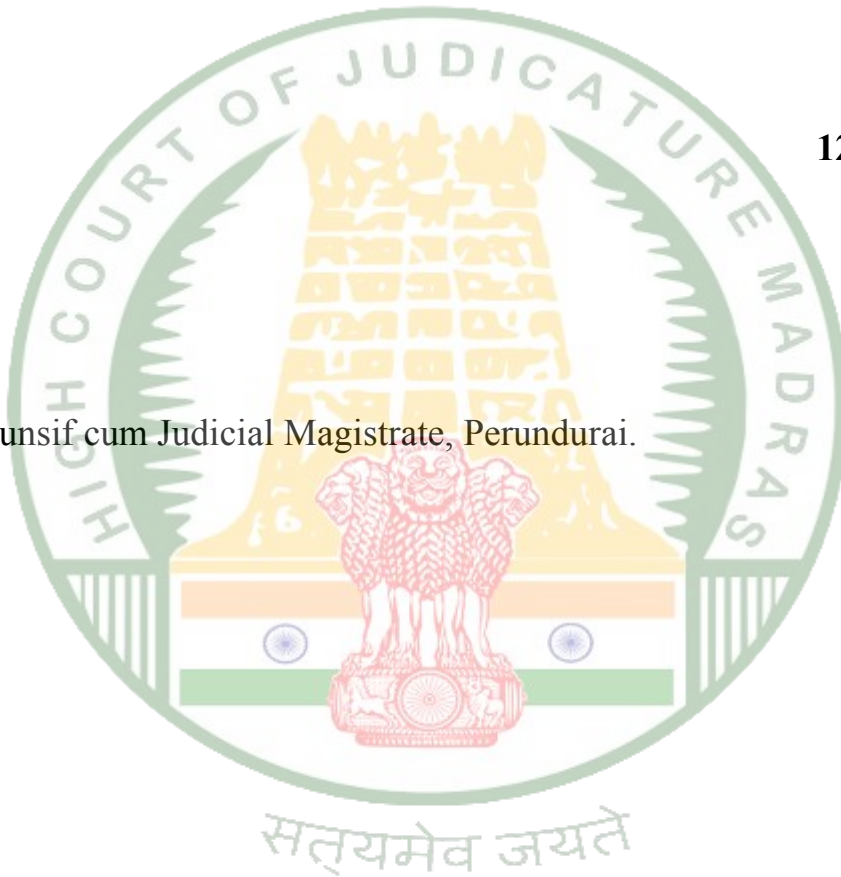
The Civil Revision Petitions are dismissed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

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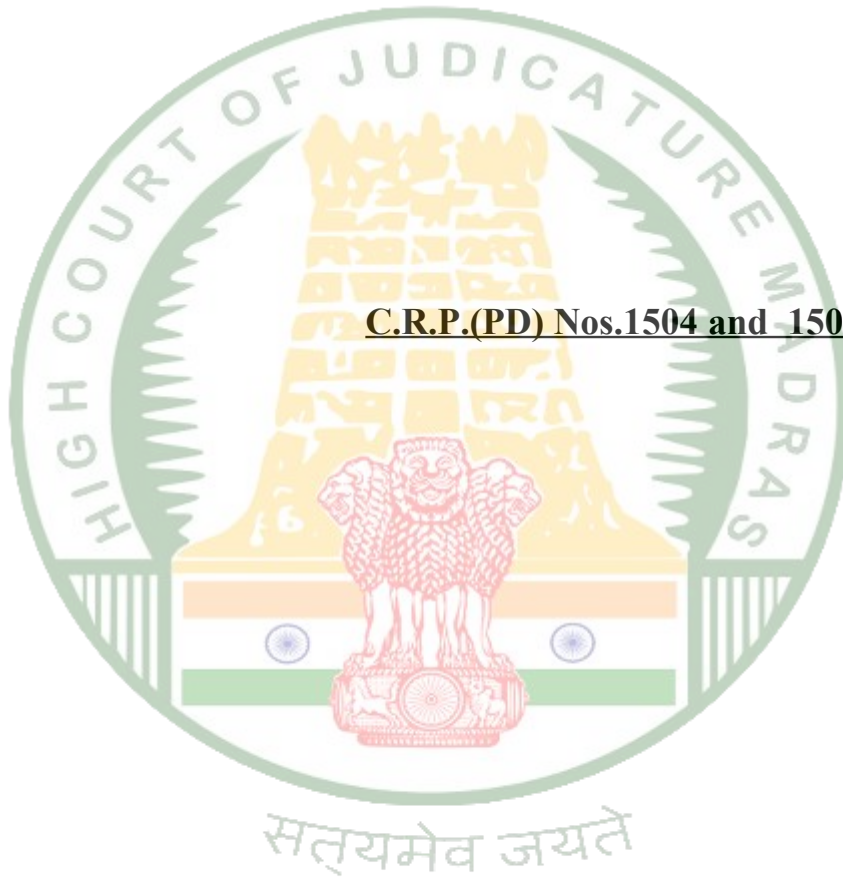
District Munsif cum Judicial Magistrate, Perundurai.



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S.VAIDYANATHAN,J.

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