

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 647 of 2018
and
C.M.P.No. 3353 of 2018

1.M.Kanniappan
2.M.Sankar

...Petitioners

Vs.

Ellammal

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.10.2017 passed in I.A.No. 74 of 2017 in O.S.No.180 of 2006 by the learned District Munsif, Chengelpat.

For Petitioners : Mrs.G.Nalini

For Respondent : Mr.Sriram for

Mr.K.Govi Ganesan

O R D E R

The plaintiffs whose application for amendment of the plaint was rejected by the Trial Court has come up with this civil revision petition.

2. The suit is one for a bare injunction. The suit was originally filed for an extent of 52 cents in Survey No.35. During the course of the suit, the plaintiffs came up with an application for amendment to remove Survey No.35 and to substitute it with 35/2 by way of I.A.No.257 of 2013. The said application came to be allowed on 26.04.2013. Thereafter, the trial commenced and P.W.1 examined in chief. It is at this juncture, this present application in I.A.No. 74 of 2017 seeking further amendment to include Survey No.35/1 also in this description of the property. According to the plaintiffs, the property originally was in Survey No.35 which has now been subdivided into Survey Nos. 35/1 and 35/2. Therefore, they wanted to include Survey No.35/1 also in the description of the property.

3. This was resisted by the defendants contending that Survey No.35/1 never formed part of the plaintiffs' property. According to the defendant, Survey No.35/1 belongs to his vendors and therefore, the amendment sought for should not be allowed. He would also characterise the amendment as belated and post trial amendment. The lack of sufficient reasons as required by proviso to Order 6 Rule 17 was also high lighted by the defendant. The learned trial judge, who heard the application concluded that the amendment is highly belated as being of post trial amendment unless the plaintiffs are able to satisfy the Court that they could not have filed the application earlier despite due diligence, they would not be entitled to leave to amend the plaint. The trial Court also concluded that the plaintiffs had not made out such a cause and therefore, dismissed the application.

4. I have heard Mrs.G.Nalini, learned counsel for the petitioner and Mr. Sriram for Mr.K.Govi Ganesan learned counsel for the respondent.

5. Mrs.G.Nalini, learned counsel for the petitioner would vehemently contend that the Trial Court was not right in dismissing the application for amendment, which was only to include another survey number in the description of the suit property. According to her, it would not cause any prejudice to the defendant. She would also contend that the revenue records stand in the name of the vendors of the defendant. The Trial Court, overlooked the fact that the vendors of the defendant are the parents of the plaintiffs therefore, the revenue records stand in their name.

6. Contending contra, Mr.Sriram, learned counsel for the respondent would submit that in the absence of any reason as to why the application was not filed before the trial commenced, the Court cannot allow the plaintiff to amend the plaint in view of the proviso to Order 6 Rule 17 of C.P.C. Drawing my attention to the affidavit filed in support of the application, Mr. Sriram would point out that there is no averment, which would satisfy the requirements of Proviso to Order^ Rule 17 of C.P.C. I have considered the rival submissions.

7. I find some force in the submission of the learned counsel for the respondent based on proviso to Order 6 Rule 17 of C.P.C. A perusal of the affidavit shows that it does not disclose any reason as to why the plaintiff did not file the application before trial. The affidavit is totally silent on the requirements of the proviso to Order 6 Rule 17. Apart from the above, it is seen that the plaint was amended earlier, wherein, the plaintiff sought to alter the survey number from 35 to 35/2. The plaintiff cannot be allowed to keep on amending

the suit schedule property till the judgment is pronounced. I do not see any irregularity or illegality to interfere with the order of the Trial Court. Hence, this civil revision petition is dismissed, the order of the trial court is sustained. Consequently, connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

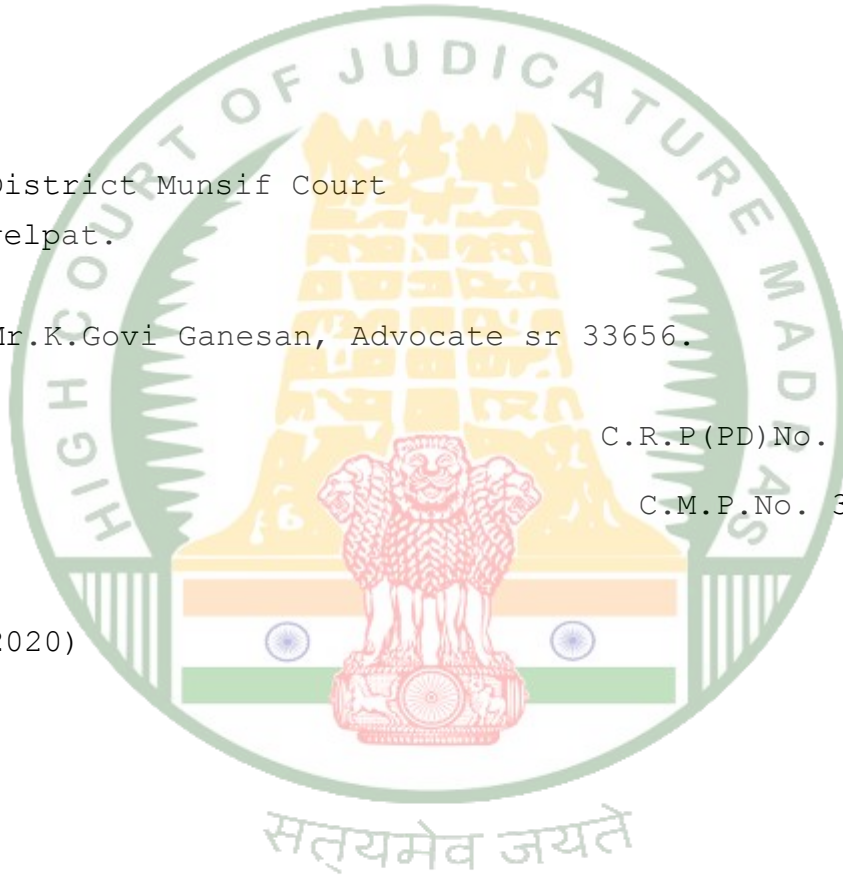
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To:

The District Munsif Court
Chengelpat.

+1 CC to Mr.K.Govi Ganesan, Advocate sr 33656.

C.R.P(PD)No. 647 of 2018
and
C.M.P.No. 3353 of 2018

RK(CO)
SP(08/12/2020)



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