

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.(PD) No.2823 of 2019

and

C.M.P.no.18513 of 2019

Karunaiammal

...Petitioner

..Vs..

1.Duraisamy

2.Avinashikutty

...Respondent

COMMON PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 19.09.2016 made in I.A.No.1135 of 2015 in O.S.No.320 of 2010 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioner :Mr.S.Mukunth

For R1 :Mr.P.Saravana Sowmiyam

For R2 :No appearance

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ORDER

The first defendant is the Revision Petitioner herein.

2. The respondent/plaintiff has filed a suit for declaration that it is a common property and also made specific averments in Para 5 and Para 6. Subsequently, after filing of the written statement, he has filed the present application in I.A.No.1135 of 2015 for amendment of pleadings whereby he has given certain additional particulars to be incorporated in the Para 6 and Para 7. The said application was resisted on the ground that based upon the alleged Partition Deed dated 06.06.2002 the suit is filed and now the plaintiff wanted to introduce an another plea that on 04.08.2012 the property was measured by means and bounds and there was a oral partition to that effect.

3. The learned District Munsif, Gobichettipalayam has observed that the suit was filed on 04.09.2010 for declaration of title and for Permanent Injunction. The written statement was filed on 04.07.2010 and issues were framed, the matter was posted for trial. At this juncture, this application has been filed.

4. The learned District Munsif has observed that the proposed amendment does not alter the structure of the suit and hence, allowed the application on payment of costs of Rs.1000/-.

5. The learned counsel for the petitioner/defendant contended that there is a inconsistency pleadings after partition on 06.06.2012, there was another oral partition witnessed by named Nanjappan and Seshadri, thereby the basis structure of the suit has been changed and also stated that the application has been filed after 5 years of plaint.

6. The learned counsel for the respondent contended that it is a pre-trial amendment and after this order passed on 19.09.2016, the C.R.P was not filed immediately. Accordingly, the trial has commenced. P.W.1 was examined in-chief and cross examined on behalf of first defendant. Only when the matter was posted for further cross-examination this C.R.P is filed.

7. After going through the pleadings and proposed amendment whether there is a oral partition has taken place on till 04.08.2012 or not, it is a matter for trial and an separated issue to be framed and evidence has been let in. Furthermore, with regard to the nature of the pleadings and the reliefs sought for there is no alternative of pleadings with inconsistency, as contended by respondent herein.

8. In view of the fact that the new averment that sought to be made by way of amendment does not alter the basic structure of the suit and it is only a subsequent event which has been incorporated by way of amended occasion. However as the amendment does not alter the structure of the property nor dispute between the parties. The trial Court has rightly held that it is a pre-trial amendment and hence, I do not find any reason to entertain with this order.

9. It is hereby clarified that the observation made above is only for the purpose of disposal of the C.R.P. It is only for the trial Court to frame necessary issues or additional issues based upon the pleadings and the reliefs sought for.

10. Hence, this Civil Revision Petition is disposed of with the above direction as stated supra. No costs. Consequently, connected Miscellaneous Petition is closed.

11.11.2020

nvi

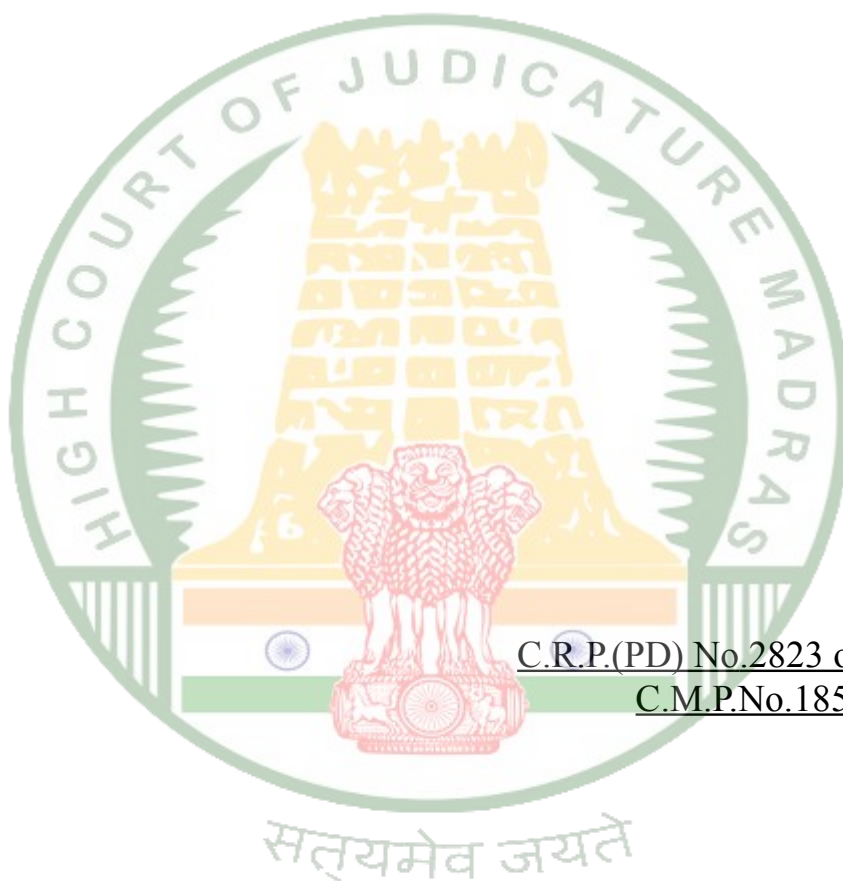
Index: Yes/No

Speaking Order: Yes/No

To

The District Munsif Court, Gobichettipalayam.

RMT.TEEKAA RAMAN,J.,



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