

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD). Nos. 105 & 106 of 2017
and C.M.P. No. 516 of 2017

1.Rajambal
2.Valliammal
3.Rajeswari
4.Samuvel

...Petitioners in both the petitions

Vs

1.Vinayathu Udayar
2.Rajendiran
3.Tamizhmuthu
4.Umarani
5.Pachaiammal
Murugan (died)

...Respondents in both the petitions

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decretal orders in I.A. Nos. 313 and 1088 of 2016 respectively in O.S. No. 644 of 2008 dated 22.07.2016 on the file of the III Additional District Munsif, Kallakurichi.

(In both Petitions)

For Petitioners : Mr. N. Suresh

For R1 and R2 : Mr. T.L. Thirumalaisamy

For R3 to R5 : No appearance

COMMON ORDER

The matter is heard through "Video Conferencing".

These Civil Revision Petitions are filed to set aside the fair and decretal orders in I.A. Nos. 313 and 1088 of 2016 respectively in O.S. No. 644 of 2008 dated 22.07.2016 on the file of the III Additional District Munsif, Kallakurichi.

2. The parties in both the Civil Revision Petitions are one and the same.

The petitioners are the defendants 5 to 8, respondents 1 and 2 are plaintiffs and respondents 3 to 5 are the defendants 1 to 3 in O.S. No. 644 of 2008. The respondents 1 and 2 filed the suit against the petitioners and respondents 3 to 5, for declaration that 'A' schedule property belongs to Sri Kandeeshwarar Temple, 'B' Schedule property is only for running "Thanneer Pandhal"

(தண்ணீர் பந்தல்) and for injunction restraining the petitioners and respondents 3 to 5 from encumbering or dealing with the property. The petitioners and respondents 3 to 5 are contesting the suit. After conclusion of evidence, the suit was posted for arguments. The respondents 1 and 2 filed present two petitions for re-opening and amending the schedule of the property.

2(a) According to the respondents 1 and 2, they have mentioned 6 items of the properties in 'A' Schedule as per Schedule in the settlement deed viz., Ex.P1. They did not give the serial numbers to the said properties and not mentioned the re-survey numbers. They also wanted to add a phrase “for charitable purpose”, after the phrase “Thanneer Pandhal” (தண்ணீர் பந்தல்) in Schedule 'B' of the property.

3. The petitioners filed counter affidavits and contended that the petitions filed by the respondents 1 and 2 are belated one as the petitioners have mentioned the re-survey numbers in the written statement itself and also mentioned the same at the time of cross-examination of P.W.1 in the year 2014 itself. The respondents 1 and 2 have filed petition for appointment of

Advocate Commissioner mentioning the re-survey numbers. In view of the same, the present petitions for re-opening and amendment are not necessary.

4. The learned Trial Judge, considering the averments in the affidavits, counter affidavits and arguments of both the parties and the fact that the petitioners and respondents have admitted the re-survey numbers, the petitioners and respondents 3 to 5 will not be prejudiced and amendment will enable the Court to consider the issue in proper perspective, allowed both the applications.

5. Against the said orders dated 22.07.2016 passed in I.A. Nos. 313 and 1088 of 2016 respectively in O.S. No. 644 of 2008, the present two Civil Revision Petitions have been filed.

6. The learned counsel appearing for the petitioners contended that the order of the learned Judge is totally impermissible as the same was sought for when the suit was posted for arguments. The Trial Court has committed material irregularity in allowing the applications. The respondents 1 and 2

were negligent and deliberately not taken any steps earlier for amendment, even though the same was pointed out in the written statement and also during cross-examination in the year 2014 and prayed for allowing the Civil Revision Petitions.

7. The learned counsel appearing for the respondents 1 and 2 submitted that the learned Trial Judge, considering the fact that both the petitioners as well as the respondents have admitted the re-survey numbers, allowed the applications as no prejudice will be caused to the petitioners and respondents 3 to 5. The petitioners have filed the Civil Revision Petitions only to drag on the proceedings and prayed for dismissal of the same.

8. Though notice has been served on the respondents 3 to 5 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

9. Heard the learned counsel appearing for the petitioners as well as the respondents 1 and 2 in both the petitions and perused the materials available

on record.

10. From the materials available on record, it is seen that the respondents 1 and 2 have come out with present two petitions after conclusion of evidence and when the suit was posted for arguments. From the statements in the counter affidavit filed in support of the petitions and nature of amendment sought for by the respondents 1 and 2, it is evident that they are not seeking to introduce any new case or such amendment do not alter the nature of relief sought for by the respondents 1 and 2. They have sought for amendment for giving serial numbers to the property already mentioned in the 'A' Schedule and adding a phrase “for charitable purpose” after the phrase “Thanneer Pandhal” (தண்ணீர் பந்தல்). Further, the petitioners as well as the respondents 3 to 5 have admitted the re-survey numbers and hence, no prejudice would be caused to them. For the above reason, as well as for better appreciation of issues involved in the suit, the learned Trial Judge has allowed the applications. The amendment can be ordered at any stage of the suit for valid reasons. There is no irregularity or illegality in the order the learned Judge impugned in the present two Civil Revision Petitions.

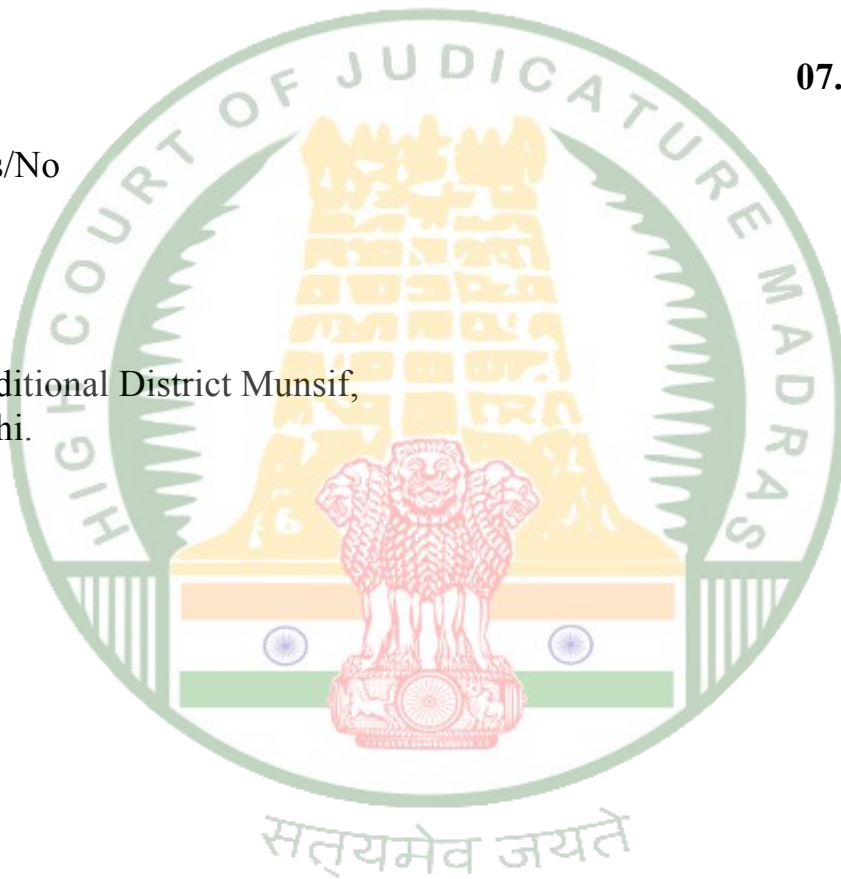
11. In the result, both the Civil Revision Petitions are dismissed.
Consequently, connected Miscellaneous Petition is closed. No costs.

07.09.2020

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Index : Yes/No

To

The III Additional District Munsif,
Kallakurichi.



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V.M.VELUMANI, J.

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