

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM:

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

C.R.P. (PD). No. 261 of 2017

Shanthi

... Petitioner

Vs

1.K. Devaraj
Kannu (since deceased)

2.K. Rajammal

3.K. Panjalai

4.K. Malarkodi

5.K. Gandhimathi

6.Vasuki

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 10.08.2016 made in I.A. No. 115 of 2016 in O.S. No. 35 of 2007 on the file of the District Munsif Court, Harur.

For Petitioner : Mr. C. Munusamy

For Respondents : No appearance

ORDER

The matter is heard through "Video Conferencing".

The present Civil Revision Petition is filed to set aside the fair and decretal order dated 10.08.2016 made in I.A. No. 115 of 2016 in O.S. No. 35 of 2007 on the file of the District Munsif Court, Harur.

2. The petitioner is plaintiff in O.S. No. 35 of 2007 on the file of District Munsif Court, Harur. Originally, the petitioner filed suit for declaration and injunction against the 1st respondent and her maternal grandfather viz., Kannu. Pending suit, the 2nd defendant died. The respondents 2 to 6 were impleaded as defendants 3 to 7. The respondents are contesting the suit. The petitioner filed I.A. in the year 2011 for amendment of the plaint, seeking relief of possession, instead of injunction. According to the petitioner, when she and her husband were away to Madras in the year

2008, the 1st respondent encroached the suit property. After contest, I.A. was allowed and amendment was carried out. Trial commenced. The petitioner and respondents let in evidence and evidence was closed on both sides. The suit was posted for arguments. At this stage, the petitioner filed I.A. No. 115 of 2016 for amendment of the plaint to include the relief that cancellation of settlement deed dated 09.01.2007 executed by the 2nd defendant, her maternal grandfather is illegal and execution of settlement deed in favour of the 1st respondent is void.

2(a) According to the petitioner, by mistake, the amendment now sought for was not included in the plaint as settlement deed dated 21.04.2003 executed in favour of the petitioner was unilaterally cancelled without knowledge of the petitioner and that settlement executed in favour of the 1st respondent is also behind the back of the petitioner. The inclusion of the present prayer is necessary for proper adjudication of the suit. The 1st respondent filed counter affidavit and opposed the application. The respondents 3 to 5 adopted the counter affidavit filed by the 1st respondent and prayed for dismissal of I.A. No. 115 of 2016.

2(b) The learned Judge, considering the averments in the affidavit, counter affidavit and the fact that the petitioner had an opportunity to seek amendment now sought for when she filed the petition for amendment of plaint in the year 2011 itself, dismissed the petition.

3. Against the said order of dismissal dated 10.08.2016 made in I.A. No.115 of 2016 in O.S. No. 35 of 2007, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner contended that the learned Judge failed to consider that amendment of the plaint could be ordered at any stage of the suit. The petition for amendment of the plaint was filed in order to avoid multiplicity of proceedings and to avoid dismissal of the suit on technical grounds. If the order of dismissal is allowed to stand, the petitioner will be prejudiced.

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

6. Heard Mr. C. Munusamy, learned counsel appearing for the petitioner and perused the materials available on record.

7. The petitioner who is the plaintiff in O.S. No.35 of 2007 has filed the present petition in I.A. No.115 of 2016 for amendment of the plaint, after commencement of the trial, conclusion of evidence and when the suit was posted for arguments. As per Order VI Rule 17 of C.P.C., a plaint can be amended at any stage of the suit, but if amendment is sought after commencement of trial, the Court must be satisfied that inspite of due diligence, the party could not have filed the petition for amendment before commencement of trial and no prejudice will be caused to the other side. In the present case, after filing of the suit for declaration and injunction in the year 2007, the petitioner filed I.A. in the year 2011 for amendment of plaint

to substitute the relief of possession, instead of injunction. The settlement deed dated 21.04.2003 executed in favour of the petitioner was cancelled by the 2nd defendant on 09.01.2007 and settlement deed was executed in favour of the 1st respondent on 21.04.2007. When the petitioner filed amendment of the plaint to substitute relief of possession instead of injunction in the year 2011, the petitioner had an opportunity to seek the amendment now sought for also. The petitioner has not given any reason for not filing the petition for amendment now sought for, before the commencement of trial or during the year 2011 when the earlier petition for amendment was filed. In the typed set of papers, the petitioner has included only additional written statement filed by the respondents. The 1st respondent filed written statement before 2013 itself, stating about the cancellation of settlement deed and execution of cancellation of settlement deed in favour of the petitioner and execution of settlement deed in his favour. Inspite of the same, the petitioner was not diligent enough to seek amendment now sought for. Including the present relief now sought for, will definitely prejudice the 1st respondent. The learned Judge has considered all the materials on record and dismissed I.A.No.115 of 2016, by giving cogent and valid reasons. There is no irregularity or illegality

in the order passed by the learned Judge, warranting interference by this Court.

8. In the result, this Civil Revision Petition is dismissed. No costs.

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gsa

Index: Yes/No

To

The District Munsif,
Harur.

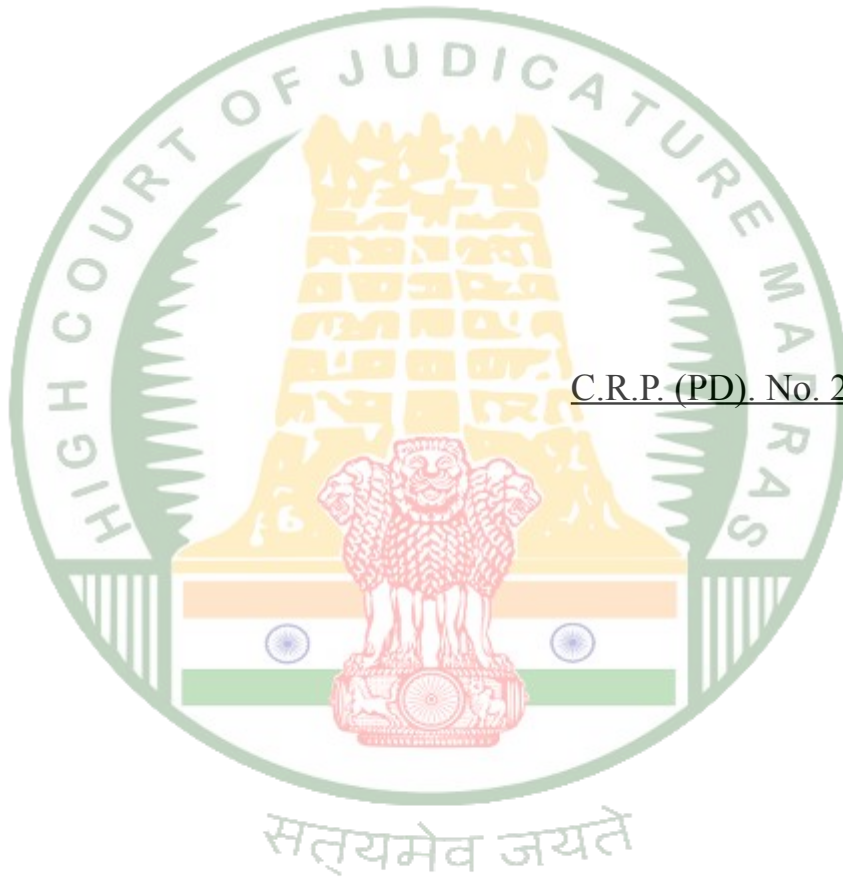


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V.M.VELUMANI,J.

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