

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(PD).No.4389 of 2017
and
CMP.No.20882 of 2017

Venkatachalam (died)

1. Mahendran

2. Muniammal

3. Tmt. Neela

... Petitioners

Vs.

1. Jayaraman

2. Muralidharan

3. Kavitha

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India praying to set-aside the fair and final order dated 11.11.2016 in I.A.No.83 of 2016 in O.S.No.25 of 2013 on the file of II Additional District Court, Salem, and allow the Civil Revision Petition.

For Petitioner : Mr. S. Kaithamalai Kumaran

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioners' application filed under Order 6 Rule 17 CPC to amend the plaint to delete some portion of the properties from the suit schedule.

2. The petitioners/plaintiffs have filed a suit in O.S.No.25 of 2013, on the file of the II Additional District Court, Salem for partition. In the above suit, trial was over and after conclusion of trial, when the suit was posted for argument, the petitioners/plaintiffs had filed an application to amend the plaint to delete some items of the properties from the suit schedule. That application came to be dismissed by the trial Court. Now, challenging the same, the present revision has been filed.

3. Heard the learned counsel for the petitioner and perused the materials available on records carefully.

4. Originally, the suit was filed for partition in the year 2012 , and the defendants filed their written statement, in the year

2013, objecting the claim of the petitioners in respect of certain properties, wherein, the defendants have taken a specific stand that instead of a deed of partition, a sale deed dated 30.12.2004 was executed by the defendants 1 and 2 in favour of the plaintiffs once again, they cannot sought for partition of those properties. Thereafter, the trial was over and the matter was posted for argument. At this stage, the present application has been filed stating that the properties, which was the subject matter of the sale deed dated 30.12.2004 is the absolute property of the plaintiffs, in which, the defendants have no right or title. Hence, they want to delete the property from the suit schedule. The trial Court, after considering the materials, has held that even though the respondents/defendants have filed their written statement in the year 2013 and both the parties adduced evidence on their sides, after conclusion of trial, when the matter is listed for argument on the side of the petitioners, the petitioners have filed the application, which is barred under proviso to Order 6 Rule 17 CPC. Unless the petitioners show that, despite due diligence, the

application could be filed, the petitioner cannot sought for amendment at this stage. I have gone through the records carefully. In the year 2013, the defendants had raised specific plea regarding the above properties. It is seen that during trial also the P.W.1 was cross-examined on that aspect. Now after conclusion of trial, when the suit is posted for argument, the petitioners cannot maintain the present petition for amendment. The trial Court, after considering the materials, rightly dismissed the application. I find no illegality or irregularity in the order passed by the Court below and I find no merit in the revision.

5. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.02.2020

Index:Yes/No

Internet:Yes

Speaking/Non-speaking order
mrp

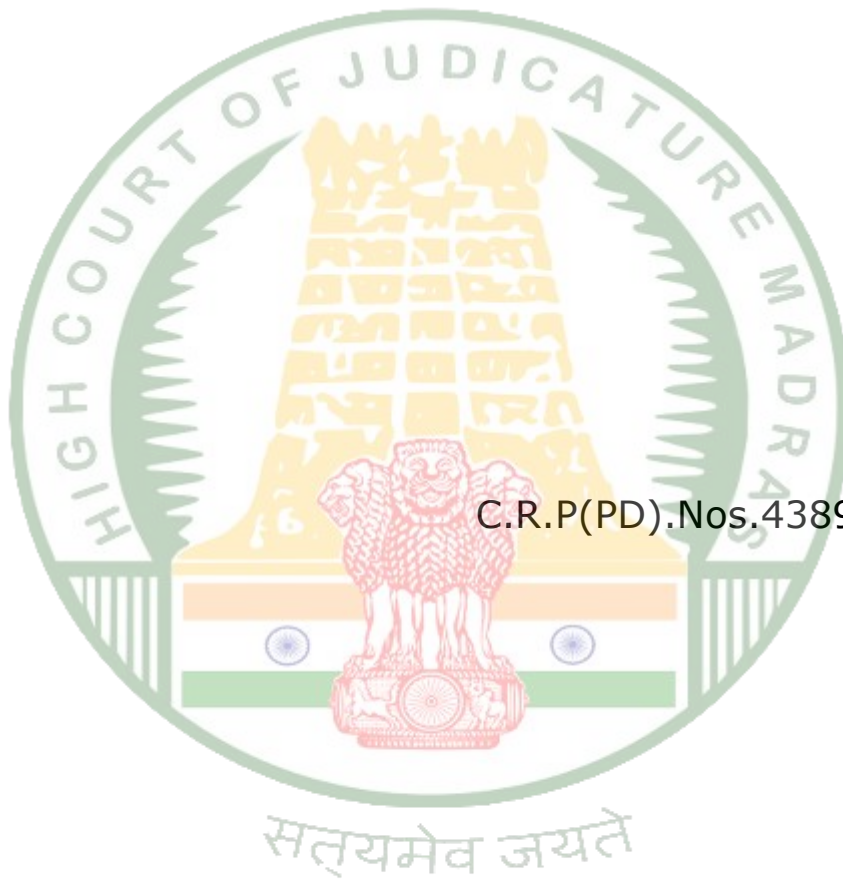
To

The II Additional District Court, Salem

C.R.P(PD).No.4389 of 2017

V.BHARATHIDASAN, J

mrp



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