

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

**C.R.P.(PD) No. 3617 of 2018
and
C.M.P.No. 20217 of 2018**

J.Karthikeyan

S/o Janakirama Udayar,

Karapattu Madura,

Banu Nagar,

Chengam Taluk,

Thiruvannamalai.

... Petitioner

-Vs-

1. K.Raman

2. M.Shanthi

3. M.Jeyanthi

4. M.Ashokan

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India pleased to set aside the order dated 17.09.2018 in I.A.No.758 of 2017 in O.S.No.79 of 2014 on the file of District Munsif Court, Chengam and allow the above Civil Revision Petition.

For Petitioner : Dr.R.Gowri

For Respondents : Mr.A.Prakash for Mr.C.Munusamy

ORDER

The defendant in O.S.No.79 of 2014, a suit for declaration, permanent injunction and mandatory injunction has come up with this revision questioning the order of the trial court in I.A.No.758 of 2017. I.A.No.758 of 2017 is an application filed for an amendment of the plaint. The plaintiff has filed the suit for declaration, permanent injunction and mandatory injunction in respect of an extent of 1 acre and 70 cents in S.No.17/7 situated within specific boundaries. The defendant filed a written statement raising various contentions and disputing the title of the plaintiff to the suit property. The defendant had also pointed out in paragraph 40 of the written statement that while the suit plan shows that the suit property is situated in S.No.17/8 in the schedule of property it is shown as S.No.17/7. The plaintiff was examined as PW1 and he was also cross examined. Thereafter, the plaintiff came up with the instant application in I.A.No.758 of 2017 seeking amendment of the plaint, to delete S.No.17/7 and to include S.No.17/8.

2. According to the plaintiff, typographical error has crept in the plaint and the documents relating to S.No.17/8 have already been produced. The typographical error was noticed only when he was cross examined relating to the description of the suit property. Contending that the amendment will not take the defendant by surprise and the defendant will not be prejudiced by such amendment, the plaintiff sought leave to amend the plaint.

3. The Trial Court, on a consideration of the facts and circumstances of the case, found that the genuine typographical error has crept in at the time of filing the plaint. The fact that the documents relating to S.No.17/8 had been filed along with the suit was also taken note of by the trial Court . According to the trial Court, the defendant is aware of the fact that the actual dispute is only with regard to S.No:17/8, therefore the amendment will not cause any prejudice to the defendant. On the question of delay, the trial Court found that the plaintiff has explained the delay in filing the application after commencement of trial. On the above conclusion, the learned Trial Judge allowed the application subject to payment of cost. Hence, the defendant has come up with this Civil Revision Petition.

4. Heard Dr.R.Gowri, learned counsel appearing for the petitioner and Mr.A.Prakash for Mr.C.Munusamy, learned counsel appearing for the respondents.

5. Dr.R.Gowri, learned counsel appearing for the petitioner would vehemently contend that the trial court was wrong in allowing the application for amendment. She would submit that the amendment sought for is barred by limitation. She would further contend that the application has been filed after commencement of the trial and no reason has been assigned for not filing the application before the commencement of the trial as per Order VI Rule 17 (2) of the Code of Civil Procedure. The learned counsel would also point out that no document relating S.No.17/8 has been produced.

6. Mr.Prakash, learned counsel appearing for the respondents would submit that the trial court had examined the entire issue and come to the conclusion that the error in the plaint in describing the suit property as S.No.17/7 is a typographical error and there is nothing wrong in allowing the amendment. He would also submit that the plaintiff has explained the reason for not filing the application before commencement of trial.

7. I have considered the rival submissions. The suit property is described by boundaries as well as by survey number. By virtue of the amendment sought for what is to be altered is only the survey number. The plaintiff produced the document in relation to S.No.17/8, along with the suit. It should be pointed out, at this juncture, the defendant will not be prejudiced by the amendment as it is clear from the pleadings that the defendant was always aware that the dispute was relating to S.No.17/8 and not S.No: 17/7. The defendant wanted to take advantage of the mistake committed by the plaintiff in the plaint. Order 6 Rule 17(2) does not create an absolute bar on amendments after commencement of trial. Applicability of the said rule depends on the nature of the amendment and the reason assigned by the plaintiff for not filing the application before trial. I am in entire agreement with the findings of the trial court. A typographical error can be corrected even under Section 152 even after the decree. Therefore, the limitation on the powers of the Court, to allow amendment after the commencement of the trial will depend on the factual background, that arises in each case. Once it is found that it is the typographical error, the Court is bound to correct and adjudicate the dispute as effectively as

possible.

8. Taking into consideration the contents of the affidavit filed in support of this petition, it can be stated that it is the typographical error that was over looked and the same was found only during cross examination. This explanation is more probable. In view of the same, I do not think that the trial Court was in error in accepting the plea for amendment. I do not find any irregularity or illegality in the order of the trial court in granting the prayer for the amendment.

9. Accordingly, the civil revision petition stands dismissed. It is open to the defendants to file an additional statement. No costs. Consequently, connected miscellaneous petition is closed.

04.08.2020

Index: Yes / No

Speaking order / Non speaking order

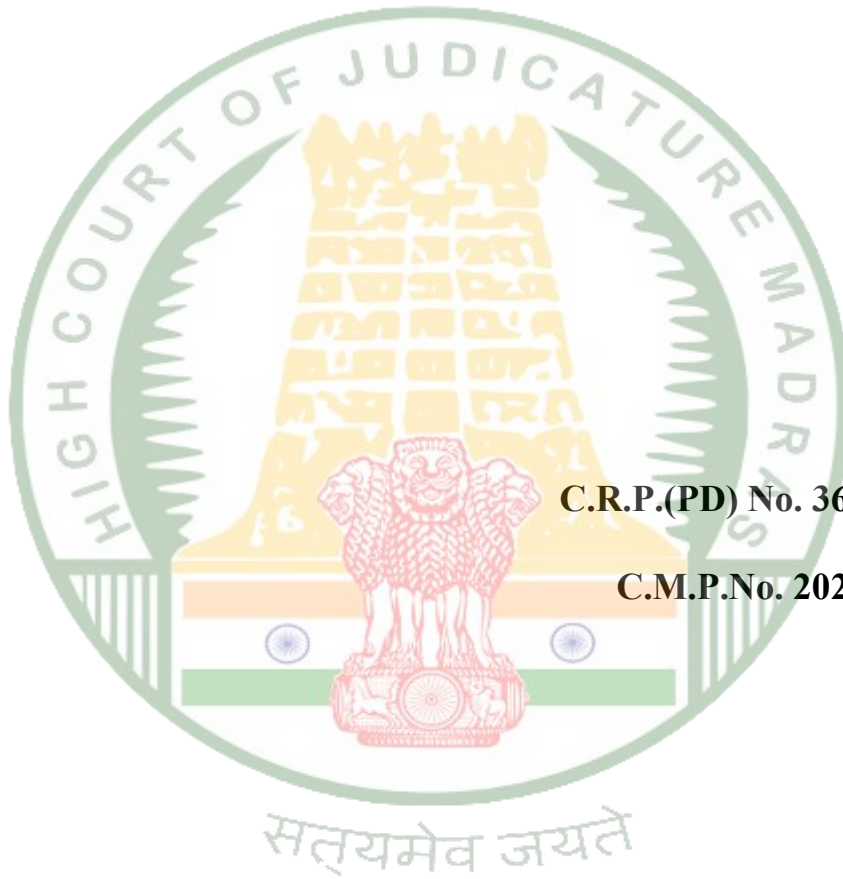
kmm

To

The District Munsif Court,
Chengam

R.SUBRAMANIAN, J.

kmm



**C.R.P.(PD) No. 3617 of 2018
and
C.M.P.No. 20217 of 2018**

WEB COPY

04.08.2020