

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

**CRP (PD) No.4196 of 2018**  
**and CMP No.23064 of 2018**

K.Domnic Savio @ Dominic Xavier ...Petitioner

Vs.

1. P.Ilanchezhian
2. P.Ilamaran
3. P.Devaki

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 03.08.2018 made in I.A.No.1341 of 2016 in O.S.No.244 of 2012 on the file of the District Munsif Court, Chengalpattu.

For Petitioner : Mr.V.Iyyapparaja

For Respondents : Mr.V.Karthikeyan, for  
Mr.D.Nickolas

**ORDER**

This revision is against an order of dismissing an application for amendment made in I.A No.1341 of 2016 in O.S.No.244 of 2012.

2. The suit was laid by the plaintiff seeking permanent injunction in respect of an extent of 508 Square meters equivalent to 5469 square feet. The land in question is admittedly classified as Grama Natham and the plaintiff would trace his title to the patta issued under the Natham settlement scheme.

3. The defendant would resist the suit contending that their father has been in possession of a portion of the property measuring about 31 feet east-west and 53 feet north-south (2 ½ cents). The defendants would also plead that the plaintiff had sold portions of the property even prior to the institution of the suit and therefore the suit filed for the entire extent is not maintainable. After trial had commenced, the plaintiff came up with the instant application seeking to amend the plaint to correct the schedule showing the extent of the suit property as 3717 square feet out of 5469

square feet equivalent to 508 square meters. This was rejected by the trial Court on the ground that the application is belated.

4. I have heard Mr.V.Iyyapparaja, learned counsel for the petitioner and Mr.V.Karthikeyan, learned counsel for the respondents.

5. Mr.V.Iyyapparaja, learned counsel for the petitioner would vehemently contend that the defendants are aware of the sales and they are also referred to the sales in the written statement. Therefore, according to him, the defendants would not be prejudiced as there is no element of surprise brought about by the amendment. He would also plead that all that the plaintiff wants to do is to reduce the extent of land by recognising the sales made by his Power agent prior to the institution of the suit.

6. Contending contra, Mr.V.Karthikeyan, learned counsel appearing for the defendants / respondents would vehemently contend that there is a considerable delay in filing the application. The sales happened in the year 2008 and the suit was filed only in the year 2012. Even in the written statement, it was pointed out that the plaintiff had sold certain

extents of properties and therefore, the suit filed for the entire extent is not maintainable. Despite such written statement, the plaintiff did not take any steps to amend the plaint, immediately. Therefore, according to Mr.V.Karthikeyan, the plaintiff is not entitled to a relief as prayed for in application before the trial Court.

7. I have considered the rival submissions.

8. No doubt, the amendment is a post trial amendment. The plaintiff has stated in the affidavit filed in support of the petition that the sales were not accounted for while filing the original suit by over sight and the amendment application is confined only to the correction of the extent of land, reducing it by the area sold.

9. I see much force in the contentions of the learned counsel for the petitioner when he submits that since the defendants had raised the question of sales in the original written statement filed by them and that they are aware of the sales, no prejudice would be caused to them by the

amendment being done.

10. No doubt the application has been filed at the belated stage after the trial had commenced. Order VI Rule 17 of Code of Civil Procedure does not bar post trial amendment. Proviso requires the applicant to give reasons for not filing the application earlier in point of time. The reasons assigned in the affidavit filed in support of the application shows that the failure to take steps to amend is neither wanton nor wilful. It is only due to over sight.

11. Therefore, I do not think that the trial Court was right in dismissing the application on the ground of delay alone. The nature and the scope of the amendment should also be looked into. If the amendment does not prejudice the other party, the Court must always take a liberal view regarding amendment of the plaint, so that the Courts can decide the controversy effectively and adjudicate upon the actual controversy between the parties.

12. I am, therefore of the opinion that the order of the trial Court needs interference and hence it is accordingly set aside. The Civil Revision petition will stand allowed. I.A. No.1341 of 2016 is allowed. The plaintiff shall file the amended copy of the plaint within **15 days** from the date of receipt, of either the web copy or the certified copy, of this order which ever is earlier. The defendants are right to file an additional written statement. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2020

**Note : Time bound order**  
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Index: Yes/No  
Speaking order / Non speaking order

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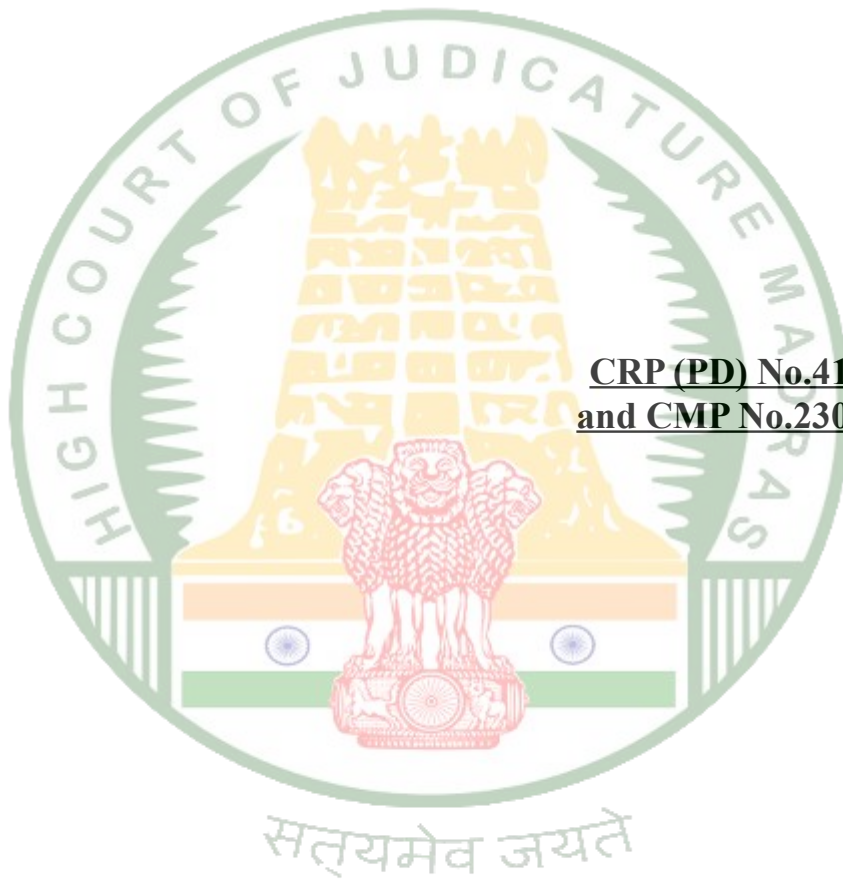
The District Munsif Court, Chengalpattu.

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**R.SUBRAMANIAN, J.**

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