

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.867 of 2009

and

MP.No.1 of 2009

K.S.Ananth

..Petitioner

Vs.

1.Kannan

2.Kumareshpillai

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order of Principal District Munsif Court, Mayiladuthurai dated 22.12.2008 made in IA.No.587 of 2008 in OS.No.89 of 2002 and allow the above civil revision petition.

For Petitioner : Mr.S.Sounthar

For Respondents

For R1

:Mr.A.Muthukumar

For R2

: disd vide court order
dated 02.08.2018

ORDER

The civil revision petition is arising out fair and decretal order of Principal District Munsif Court, Mayiladuthurai dated 22.12.2008 made in IA.No.587 of 2008 in OS.No.89 of 2002 thereby allowing the petition for amendment.

2. The first respondent filed suit initially for injunction and thereafter amended for the relief of recovery of possession in respect of the suit property. According to the plaintiff, the property comprised in 8/3 admeasuring 12 cents was purchased from one Rajalakshmi Ammal by the registered sale deed dated 22.12.1971. The petitioner / defendant purchased the property comprised in RS.No.8/4 admeasuring 17 cents. While being so, the suit schedule property is situated on the western side and the petitioner's property is situated on the eastern side. In between, there is four feet lane which belong to the plaintiff and he is in possession and enjoyment and as such suit for recovery of possession. While pending the suit, Advocate Commissioner was appointed to note down the physical features of the property with the help of the surveyor. According to the report, no lane is situated in the property comprised in RS.No.8/3 and also within the boundary of the property comprised in R.S.No.8/3. Thereafter both the side evidence was over and when the matter was posted for arguments, the plaintiff came forward with the petition to amend the schedule as follows:

In the plaint description of property...

i) Delete R.S.8/3 and substitute R.S.8/4 (Now 8/4B1 and 8/4B2)

ii) In the boundaries...

delete the word 'remaining'

After plaint paragraph 6A), add..

6B) The 2nd plaintiff learns that the suit lane portion is situate in R.S.No.8/4 (now, R.S.8/4B1 & R.S.8/4B2). The suit lane portion is specifically conveyed to the plaintiffs in their sale deed dated 22.12.1971 and specifically excluded in the sale deed of the first defendant dated 24.10.1960. But, in the sale deed of the plaintiffs the survey number is stated as 8/3. The omission of R.S.8/4 is only a clerical error committed by the scribe by inadvertence and oversight. However, the boundaries and description of the suit property clearly include the suit lane. It is respectfully submitted that the boundaries prevail over survey number. Hence the suit lane portion in R.S.8/4 is also deemed to have been conveyed to the plaintiffs and the plaintiffs have title to the lane portion also.

The above amendment sought by the plaintiff is that the suit lane portion is situated in RS.No.8/4, now RS.No.8/4B1 and 8/4B2. The said portion is specifically conveyed to the plaintiff in their sale deeds dated 22.12.1971 and specifically excluded in the sale deed of the first defendant dated 24.10.1960. Due to inadvertence, the survey No. mentioned as 8/3 instead of 8/4 and it is only clerical error committed by the scribe by oversight. Whereas as stated supra, even according to the plaintiff, the property comprised in RS.No.8/3 purchased by the plaintiff and the property comprised in RS.No.8/4 is purchased

by the defendant. When it being so, it cannot be said that due to inadvertence and oversight they wrongly mentioned survey No. as 8/3 instead of 8/4.

3. As rightly pointed out by the learned counsel for the petitioner, without rectifying the sale deed they cannot seek amendment in respect of the survey No. since in the sale deed mentioned survey No.as 8/3 for the extent of 12 cents. Without considering the above facts, the court below allowed the petition. As such the findings of the court below is perverse and liable to be set aside.

4. Accordingly, the civil revision petition is allowed and the order passed by the Principal District Munsif Court, Mayiladuthurai dated 22.12.2008 made in IA.No.587 of 2008 in OS.No.89 of 2002 is set aside. Consequently, connected miscellaneous petition is closed. No order as to costs.

सत्यमेव जयते

04.02.2021

Speaking/Non-speaking order

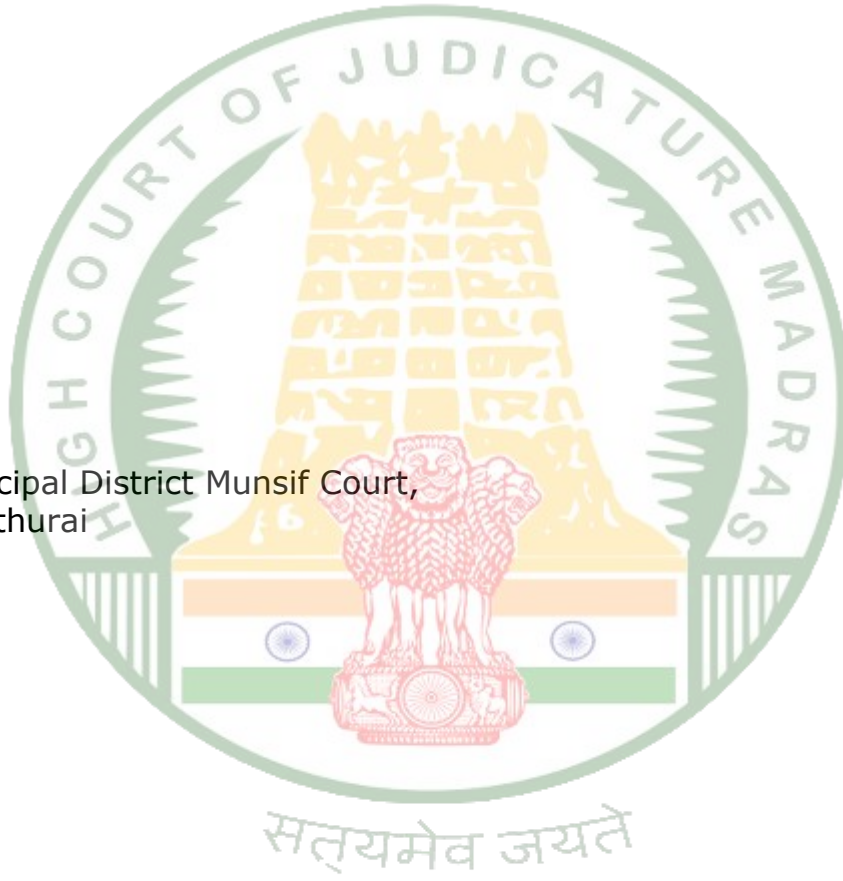
Index : Yes/No

Internet : Yes/No
lok

WEB COPY

To

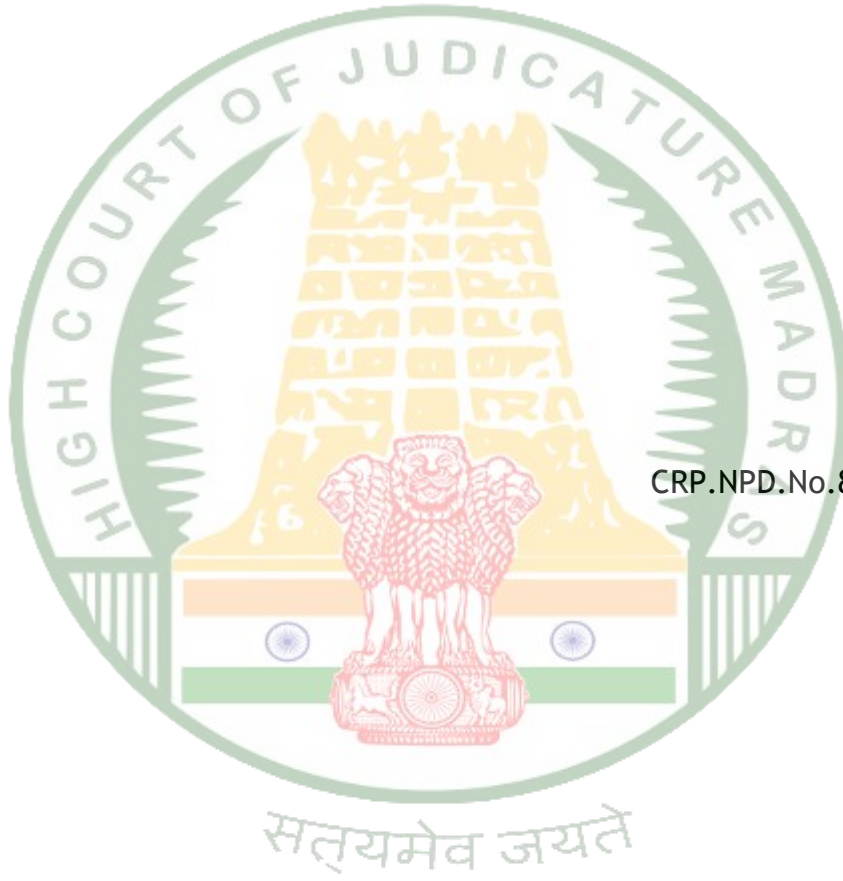
The Principal District Munsif Court,
Mayiladuthurai



WEB COPY

G.K.ILANTHIRAIYAN,J.

lok



CRP.NPD.No.867 of 2009

WEB COPY

04.02.2021