

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

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

CRP.PD.No.2177 of 2015 and
MP.No.1 of 2015

Shanmugam

..Petitioner

Vs.

1.Ramasamy gounder
2.Velu @ Kumaravel

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order passed in IA.No.79 of 2015 in OS.No.580 of 2010 on the file of the I Additional District Munsif, Erode dated 26.02.2015.

For Petitioner : Mr.V.Balamurugane

For Respondents

For R1 : Mr.N.M.Elumalai

For R2 : No Appearance

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order passed in IA.No.79 of 2015 in OS.No.580 of 2010 on the file of the I Additional District Munsif, Erode dated 26.02.2015 thereby dismissing the petition filed to receive additional written statement.

2. Heard Mr.V.Balamurugane, the learned counsel for the petitioner and Mr.N.M.Elumalai, the learned counsel for the first respondent. Though notice was served to the second respondent, none appeared on behalf of the second respondent before this Court in person or through pleader.

3. The respondent filed suit for injunction in which the petitioner is the first defendant. After completion of plaintiff's evidence, the petitioner / first defendant examined himself as DW1 and also examined DW2 and posted the matter for cross examination of DW2. At that juncture, the petitioner filed petition to receive additional written statement in the main suit.

4. On perusal of the written statement filed by the petitioner herein, he stated that he assures and undertakes that he will not encroach the suit property in any span of time, even though, patta of the suit property stands in his name. He is also ready to file affidavit stating that he will not encroach or encumber the suit property, if the Hon'ble Supreme Court of India directs him to do so. When it being so, in the additional written statement in paragraph 9, he stated that

without asking for relief of declaration, the suit for permanent injunction is not maintainable. The learned counsel for the petitioner submitted that the facts were already admitted by the petitioner in the first written statement denied in the additional written statement.

5. It is averred that the sale deed allegedly purchased by the first respondent herein and the revenue documents are fabricated one for the purpose of the suit. The first respondent is never been in possession and enjoyment of the suit property. Originally, the suit property belonged to one, Seenivasa Iyer, he sold out the suit property in favour of the petitioner's father by the sale deed dated 27.02.1967. In fact, in the sale deed clearly mentioned about the suit property and the same was already donated in favour of Suriyampalayam Panchayat even before the sale deed dated 27.02.1967. The petitioner never trespassed into the suit property and never attempted to encroach the suit property. Therefore, the first respondent has no title or any right over the suit property. The above contentions made in the additional written statement which diametrically quite opposite to the original written statement filed by the petitioner herein. On the strength of the first written statement, he was examined as DW1 and marked documents. At that juncture, the

petitioner introduced completely new case, which is not permissible under law. Therefore, the trial court rightly dismissed the petition. As such, this Court finds no irregularity or infirmity in the order passed by the court below.

6. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

07.01.2021

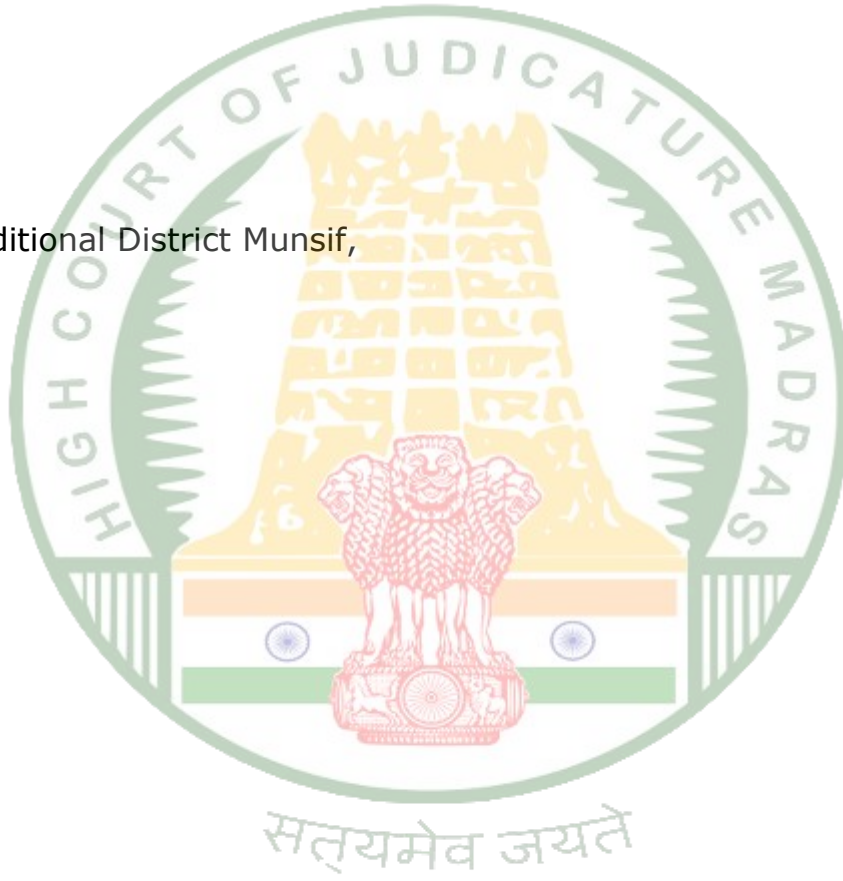
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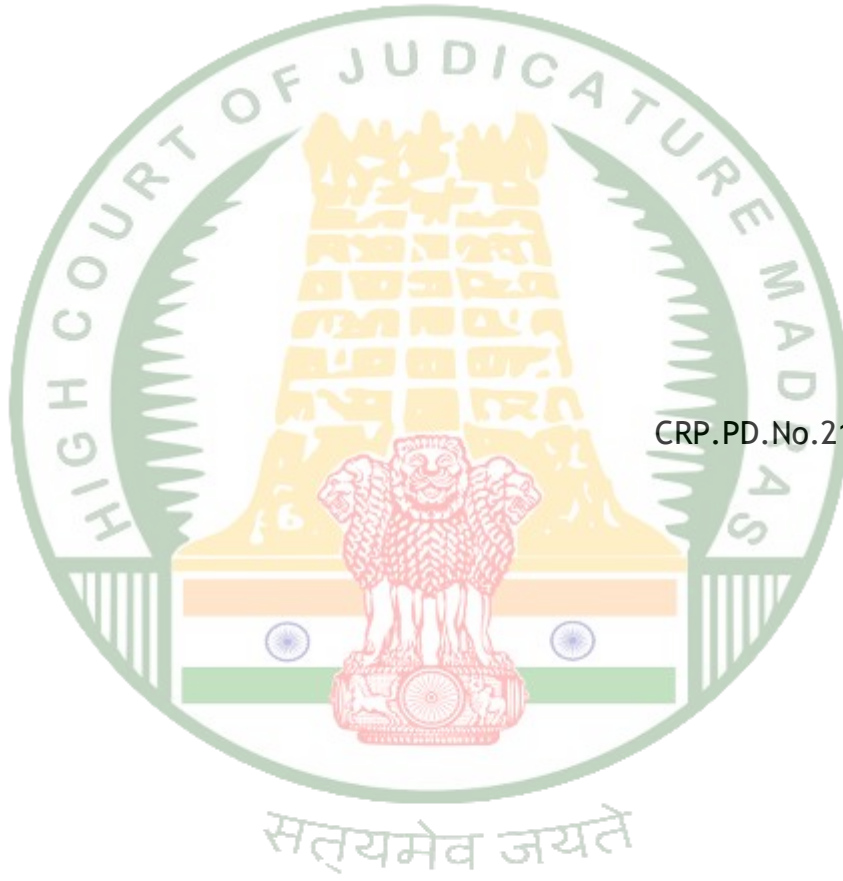
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G.K.ILANTHIRAIYAN,J.

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