

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

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

CRP.PD.No.2231 of 2015

and

MP.No.1 of 2015

Govindaswamy

..Petitioner

Vs.

1.Shankar
2.Selvan
3.Baskaran
4.Raja
5.Elumalai
6.Devendiran
7.Palani
8.Elumalai

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 23.12.2014 in IA.No.719 of 2014 in OS.No.490 of 2009 on the file of the Additional District Munsif, Thiruvannamalai.

For Petitioner : Mr.R.Rajarajan

For Respondents : notice served

ORDER

The civil revision petition is directed as against the fair and decreetal order dated 23.12.2014 in IA.No.719 of 2014 in OS.No.490 of 2009 on the file of the Additional District Munsif, Thiruvannamalai thereby dismissing the petition seeking permission to withdraw the suit with liberty to file a fresh suit.

2. Though notice served, none appeared on behalf of the respondents before this Court in person or through pleader.

3. The petitioner originally filed suit for declaration as against the respondents. After filing written statement filed by the respondents, it was understood that there is a mistake in effecting sub division and utilising the same, the respondents who are adjacent land owners of the suit property interfered with peaceful possession and enjoyment of the suit property. The sub division effected by the revenue officials in respect of the suit schedule property had been purchased by the plaintiff and it is not in conformity with the sale deed. There is defect in sub division. That apart, the discrepancy with regards to the sub division effected by revenue officials and they have included some third party properties. Therefore, the

petitioner sought permission to withdraw the suit with liberty to file a fresh suit. The court below dismissed the petition filed on the ground that the petitioner can very well file petition for amendment to correct the descriptions of the property and also they can very well rectify revenue documents. Without doing the same, filing for fresh suit with same cause of action is not permissible.

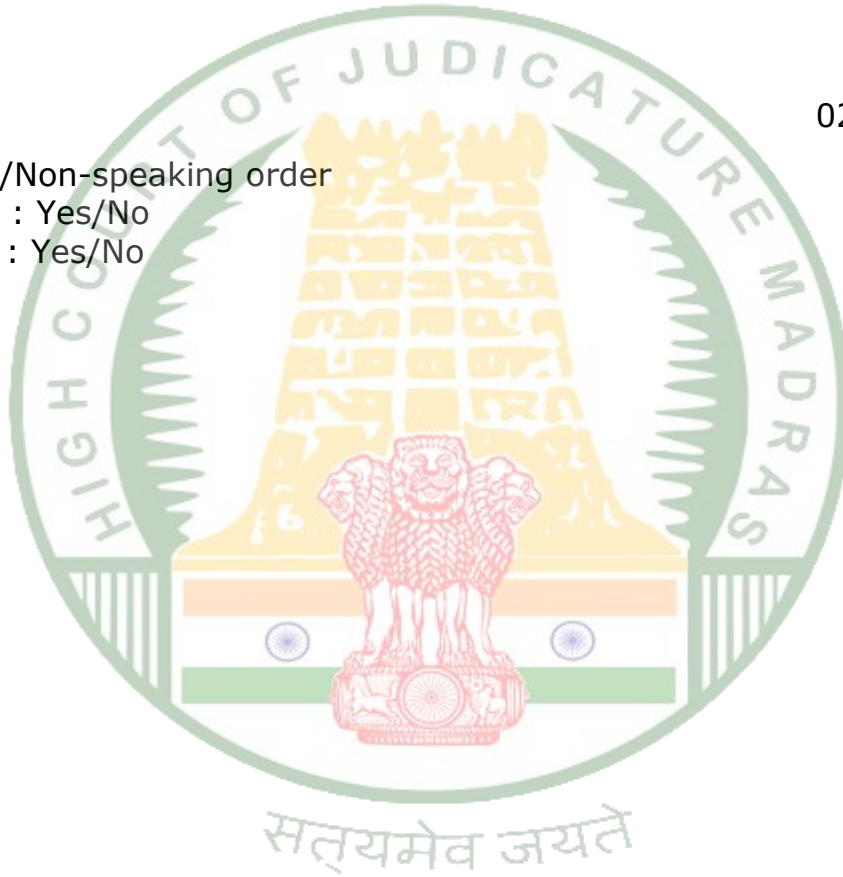
4. It is seen from Order 23 Rule 1 (3) of CPC that a suit must fail by reason of some formal defect, or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim. The court below also found that there is a defect in the plaint in respect of the description of the property with regards to sub division and as such the court below ought to have granted permission to the petitioner to withdraw the suit with liberty to file a fresh suit.

5. In view of the above discussion, this civil revision petition is allowed and the order dated 23.12.2014 passed in IA.No.719 of 2014 in

OS.No.490 of 2009 on the file of the Additional District Munsif, Thiruvannamalai is set aside. The petitioner is permitted to withdraw the suit and file a fresh suit with same cause of action. Consequently, connected miscellaneous petition is closed. No order as to costs.

02.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok



WEB COPY

To

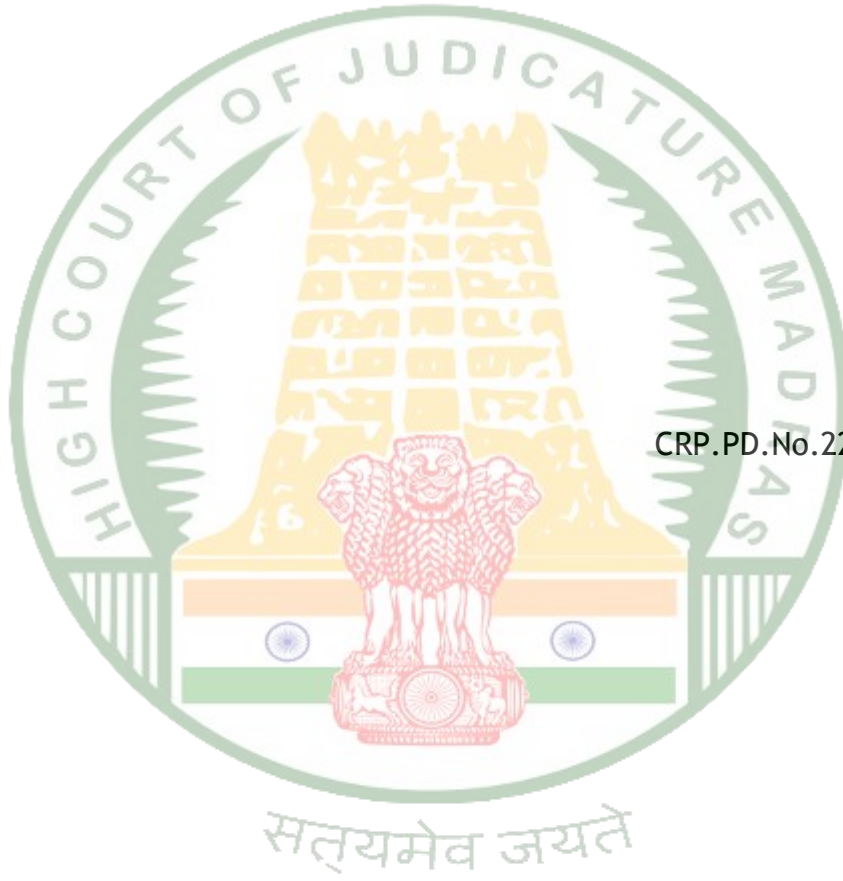
The Additional District Munsif,
Thiruvannamalai.



WEB COPY

G.K.ILANTHIRAIYAN,J.

lok



CRP.PD.No.2231 of 2015

WEB COPY

02.02.2021