

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

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

CRP.NPD.No.2251 of 2015
and MP.No.1 of 2015

R.Mani

..Petitioner

Vs.

Amudhan @ Amudhan Baskar

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC praying to set aside the order dated 10.02.2015 passed in IA.No.26 of 2014 in AS.No.9 of 2012 on the file of the Additional District Judge No.IV, Ponneri.

For Petitioner : Mr.P.Krishnan

For Respondent : No appearance

ORDER

This civil revision petition is directed as against the order dated 10.02.2015 passed in IA.No.26 of 2014 in AS.No.9 of 2012 on the file of the Additional District Judge No.IV, Ponneri thereby allowing the petition for amendment.

2. The petitioner is the defendant in the suit filed by the respondent herein for specific performance. The suit property is comprised

in S.No.64/1 and in the schedule of the property mentioned as S.No.62/1. Though the suit was decreed in favour of the respondent, the respondent failed to note the survey No. mentioned in the schedule of the property. Aggrieved by the said judgment and decree, the petitioner preferred appeal suit. While pending the appeal suit, the respondent filed petition for amendment to amend the survey No.64/1 instead of 62/1 and the reason for amendment stated that it is a typographical error and the same was allowed and aggrieved by the same, the present civil revision petition is filed.

3. The learned counsel for the petitioner would submit that the amendment sought for in spite of due diligence, the respondent could not raise the issue before the trial court and even before the commencement of trial. He further submitted that in the plaint in the paragraph 9, the respondent stated that the suit property comprised in survey No.64/1 whereas he mentioned in the paragraph 13 as well as the schedule of the property he mentioned as suit property comprised in survey No.62/1. In fact the petitioner deposed as DW1 before the trial court and he categorically stated that the suit property is situated comprised in survey No.64/1. Even then, the respondent failed to raise the plea of amendment

before the trial court. In the appeal court, that too after completion of arguments, the respondent filed the present petition for amendment. Without considering the above fact, the court below allowed the petition for amendment. In support of his contention, he relied upon the judgment in the case of **Anthonyysamy Vs. Christoraj and another** reported in **2013(4) CTC 443** and the order of this Court passed in CRP.PD.No.3937 of 2018 dated 20.11.2020.

4. Heard Mr.P.Krishnan, the learned counsel for the petitioner.

5. The petitioner is the defendant in the suit filed by the respondent for partition. The suit schedule property is comprised in survey No.64/1 situated at Panchayat Union Limits of Puzhal, Ambattur Sub Registration District, North Madras Registration District, Ambattur Taluk, Thiruvallur District. On perusal of the complaint, in paragraph 9, the respondent stated that the property comprised in survey No.64/1 whereas he mentioned survey No. wrongly in paragraph 13 and in the suit schedule property. The pre-suit notice was issued by the respondent in which stated survey No.64/1 and whereas in the schedule of the property again wrongly

mentioned as 62/1. The same error committed in the plaint. The said error was not noticed by the respondent as well as the petitioner herein. The trial court decreed the suit and mentioned the schedule of the property as mentioned in the plaint. In the appeal stage, the respondent noticed the survey No. mentioned wrongly as 62/1 instead of 64/1. Immediately, the respondent filed petition for amendment.

6. The learned counsel for the petitioner would submit that the amendment sought for in spite of due diligence of the respondent he could not amend the plaint before the court below. In support of his contention, he relied upon the order of this court passed in CRP.PD.No.3937 of 2018 dated 20.11.2020, wherein it is held as follows:

6. Admittedly, the amendment application was filed after completion of the evidence. The proviso to Order 6 Rule 17 of C.P.C., introduced by the Amendment Act of the year 2002 requires a plaintiff who seeks an amendment of the pleading after commencement of trial to show that the application for amendment could not have been filed earlier despite exercise of due diligence. A perusal of the affidavit would show that no such averments has been made in the affidavit to come to the conclusion that the amendment could not have been filed

earlier despite diligence. In fact, the Commissioner's report is cited as the source for the measurements. The Commissioner's report admittedly filed before trial.

This court held that in the affidavit filed in support of the petition, no such averments have been made in the affidavit to come to the conclusion that the amendment would have been filed earlier despite diligence. In the case on hand, except the suit schedule property, in the body of the plaint, the respondent correctly mentioned survey No. as 64/1. Therefore, it is clear typographical error. Though the petitioner raised these objections while examining PW1, i.e the respondent herein it was not cross examined by the petitioner herein. Therefore, nobody has noticed the survey No. in the schedule property even till the judgment passed in the suit.

7. The learned counsel for the petitioner also relied upon the judgment in the case of **Anthony samy Vs. Christoraj and another** reported in **2013(4) CTC 443** and submitted that no amendment can be permitted in the appeal stage. In the said judgment, it is held as follows:

16. Reverting back to the case on hand, it could be seen that the proposed amendment is in fact, an introduction of a new case, as well as wiping out the admission already made by the

plaintiff. Though, the learned counsel for the revision petitioner, has contended that the 1st respondent, in order to create a sale deed dated 09.04.2003, has falsely implicated the petitioner in a criminal case, and further contended that pleadings were already available in the original plaint and that the finding of the Court below that there was a lack of diligence is erroneous, the said submissions cannot be countenanced, for the simple reason that, comparison of paragraph Nos.3 and 4 of the original plaint averments, and the proposed amendment, makes it abundantly clear that a new case is sought to be introduced at the appellate stage. Moreover, by virtue of the proviso to Order 6 Rule 17 CPC, one of the important factors to be considered by this Court is whether the party seeking amendment, has pleaded and proved due diligence which determines the scope of the party's constructive knowledge, which as per the Apex Court in Samuel's case, cited supra, is very important, to decide an application for amendment. As rightly observed by the Court below, except to blame his counsel, no other acceptable and valid reasons have been given, as to why the plaintiff could not bring in an amendment during the trial stage. In the absence of proof, as regards due diligence, as to why the plaintiff could not file an application for amendment during the trial stage, the application moved just prior to the arguments, is nothing but a clear attempt to erase the pleadings and evidence, made by the parties, during trial, to wipe the admission made by the plaintiff, in the pleadings and to gain advantage, for upsetting a judgment and decree, decided against him. The suit has been filed in the year 2005. As stated supra, upon consideration of pleadings and evidence, the suit, has been dismissed on 09.03.2010 and that the application

for amendment has been filed on 16.08.2012, after nearly two years, from the date of decree in O.S.No.9 of 2005 and that too, just prior to arguments.

In the above case, the amendment sought for by the party concerned to erase pleadings and evidence made by the parties. Whereas in the case on hand, they want to correct the typographical error. In stead of 64/1, they wrongly typed as 62/1. Therefore, the above judgment cited by the learned counsel for the petitioner is not helpful to the case of the petitioner.

8. Further, the amendment sought for by the respondent would not cause any prejudice to the petitioner herein, since it is only a typographical error. As discussed above, in the body of the plaint, the respondent correctly stated the survey No. of the suit schedule property. In the schedule only, they wrongly typed as 62/1 in stead of 64/1. Therefore, the court below rightly allowed the petition for amendment and this Court finds no irregularity or infirmity in the order passed by the court below.

9. Accordingly, this civil revision petition is dismissed. However,

the learned counsel for the petitioner would submit that the appeal suit is of the year 2012 and request for speedy disposal. Considering the said submission, the appellate court is directed to dispose of the appeal within a period of four weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

17.02.2021

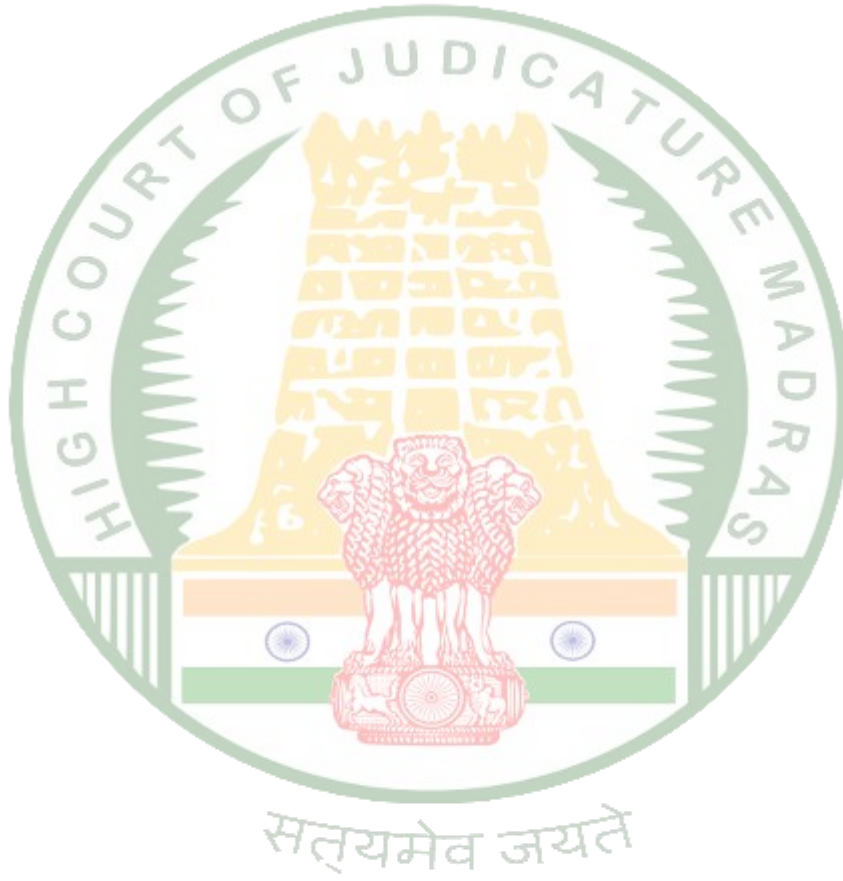
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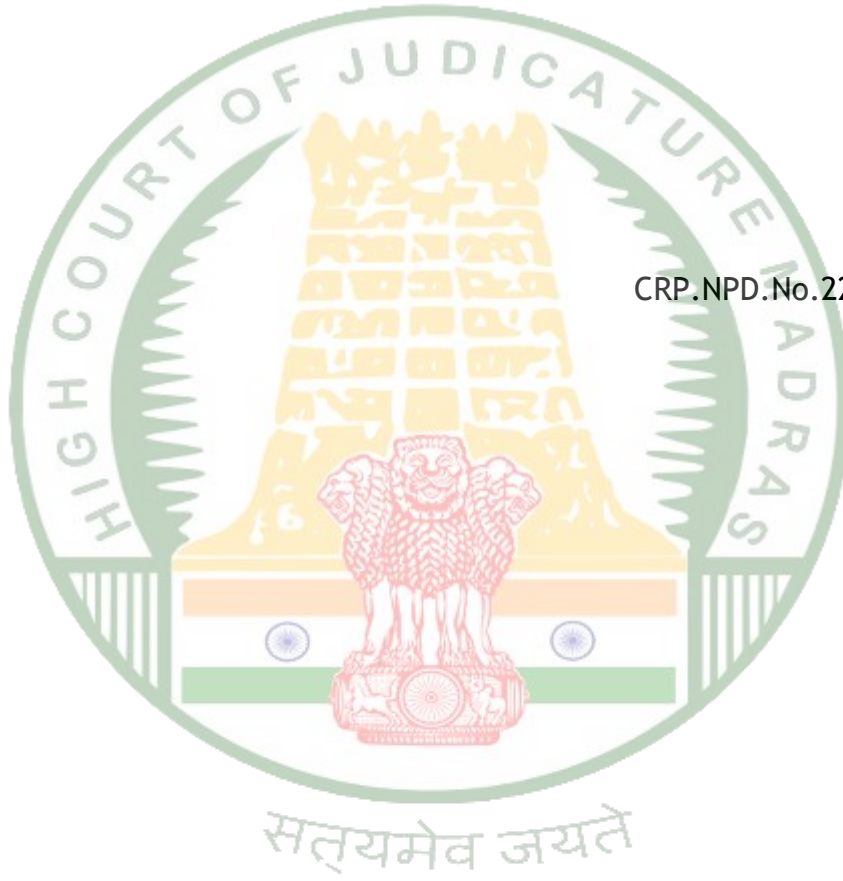
The Additional District Judge No.IV,
Ponneri.



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G.K.ILANTHIRAIYAN,J.

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