

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

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

CRP.PD.No.2543 of 2015 and
MP.No.1 of 2015

Palani

..Petitioner

Vs.

1.Thavamani
2.Jayapal
3.Karunanithi
4.Arumugam
5.Saminathan
..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal orders dated 16.04.2015 passed in IA.No.711 of 2014 in OS.No.1065 of 2009 on the file of the District Munsif Court, Katpadi.

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For Petitioner : Mr.P.Mani

For Respondents

For R1 to 3 : Mr.D.Rajagopal

For R4 & 5 : Notice served

ORDER

The civil revision petition is directed as against the fair and decretal orders dated 16.04.2015 passed in IA.No.711 of 2014 in OS.No.1065 of 2009 on the file of the District Munsif Court, Katpadi thereby allowing the petition for amendment of the plaint.

2. The petitioner is the defendant. The respondents 1 to 3 filed suit for declaration and permanent injunction including the prayer of mandatory injunction to remove the encroached portions by the petitioner. Originally, the suit was filed in the year 2004 on the file of the District Munsif Court, Vellore and thereafter transferred to the file of the District Munsif Court, Katpadi and renumbered as O.S.No.1065 of 2009. In the said suit, the Commissioner was appointed and he filed report on 20.11.2006 with rough sketch. Thereafter PW1 was examined in full. When the matter is posted for further witness, the respondents 1 to 3 came forward with the petition to amend the prayer in the plaint. The following amendment is sought for by the respondents

*"1.Wherever the word "2 ft" comes it may be read as
"5 ft"*

2. In para 8 third line of plaint delete the word "two ft of land" and may be read as "5 ft of land" and also in para 8 and in 16th line of plaint delete the word "2 ft and 27 ft" and it may be read as "5 feet and 83/2" ft.

3. In prayer column of plaint in para 11 (bb) 3rd line of plaint delete the word "2 ft and length of 27 ft" and as "5 ft. and length 83/2 ft".

4. The respondent regarding the red colour portion in the plaint may be read as "5 ft length and 83/2 ft instead of 2 ft length and 27 ft".

3. According to the respondents 1 to 3 herein, on perusal of the Commissioner's report initially they prayed for mandatory injunction directing the petitioner and other defendants to demolish and remove the illegal construction in the schedule mentioned property and the measurement was given as 2 feet width and 27 feet length in the plaint. After seeing the Commissioner's report they came to understand that the petitioner and other defendants have encroached to an extent of 5 feet width and 83.2 feet length in the suit schedule property. Therefore, they filed petition for amendment to amend the prayer of mandatory injunction in respect of property to an extent of 5 feet width and 83.2 feet length.

4. The learned counsel for the petitioner would submit that there is no sufficient reasons stated in the affidavit filed in support of the petition for amendment. The commissioner filed his report on 20.11.2006. After period of eight years, the respondents 1 to 3 filed petition for amendment, that too without stating any reason for the delay. It is nothing but filling up the lacuna and prayed for dismissal of the petition for amendment.

5. On perusal of the report submitted by the Commissioner, he categorically stated that the petitioner and other defendants encroached the suit property to an extent of 5 feet width and 83.2 feet length in the suit schedule property marked as ABCD. Therefore, the amendment sought for by the respondents 1 to 3 would not change the nature of the suit and also would not cause any prejudice to the petitioner herein. Therefore, this Court finds no irregularity or infirmity in the order passed by the court below.

6. Accordingly, this civil revision petition is dismissed.

However, the petitioner is at liberty to file his additional written statement in the main suit. The trial court is directed to complete the trial within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

09.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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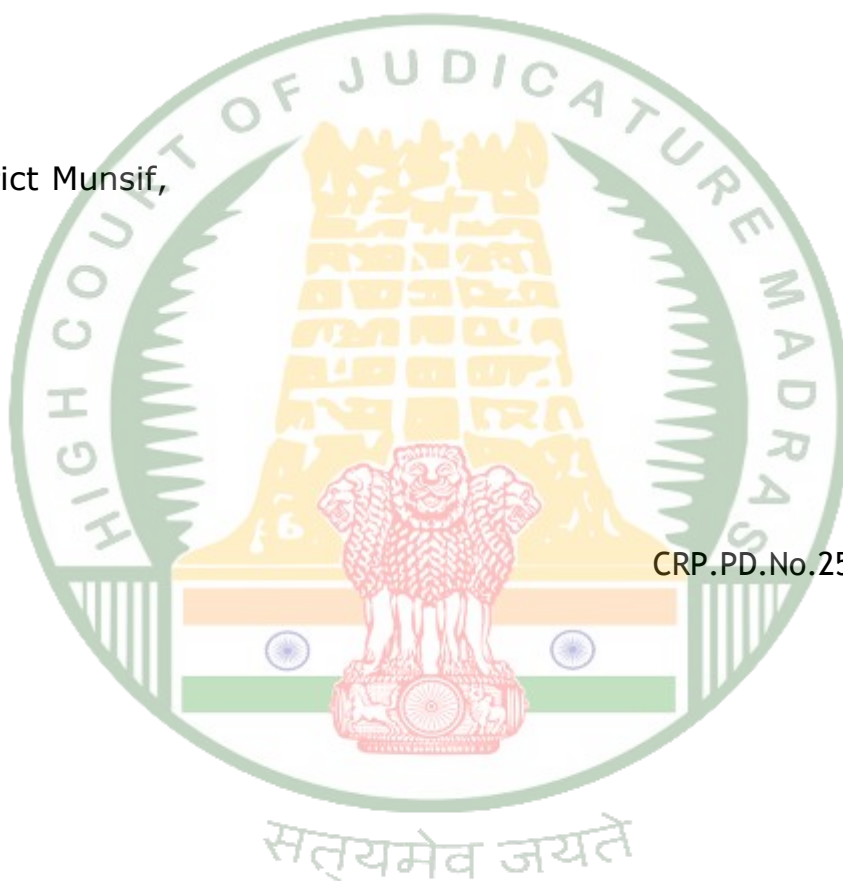
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G.K.ILANTHIRAIYAN,J.

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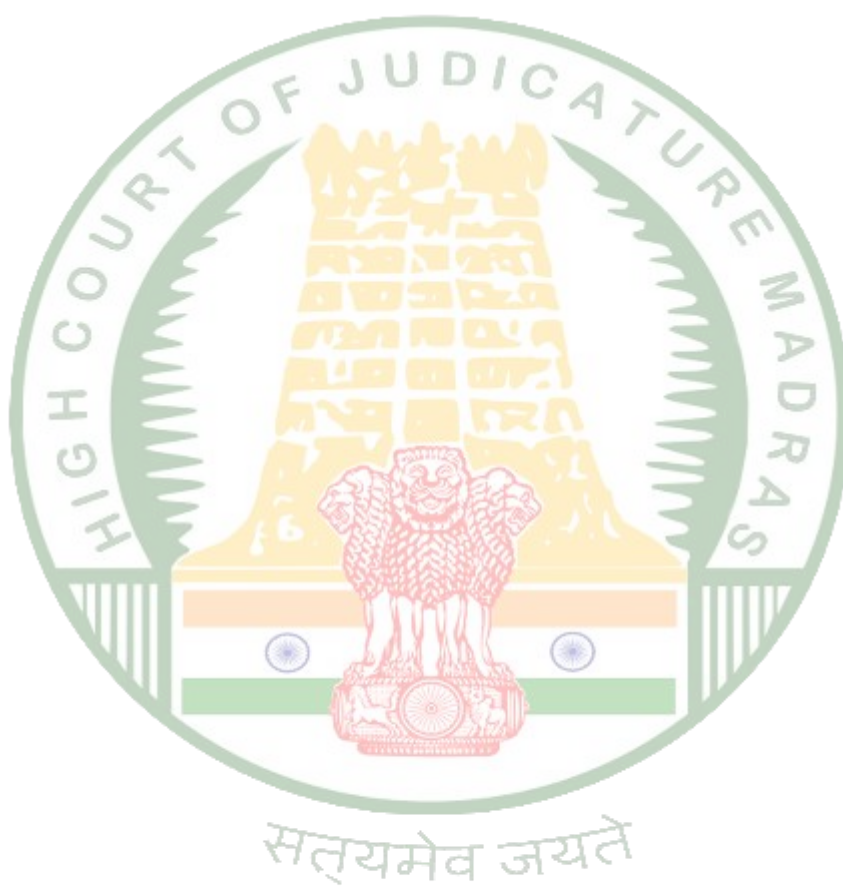
The District Munsif,
Katpadi.



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