

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

CORAM

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

CRP.PD.Nos.3585 to 3587 of 2015 and
MP.No.1 of 2015

CRP.PD.No.3585 of 2015

Jayaprakash

..Petitioner

Vs.

Santhosh(died)

1.Marimuthu

2.Andimuthu

3.Govindasamy

4.Periyanayagam

5.Shanthi

6.Babu

7.Sangeetha

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the III Additional District Munsif Court at Kallakurichi dated 04.07.2015 in IA.No.1169 of 2015 in OS.No.788 of 2006.

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For Petitioner : Mr.P.Valliappan

For Respondents

For R2 : Mr.T.Arunkumar

R1,3 to 7 : Notice served

CRP.PD.No.3586 of 2015

Jayaprakash

..Petitioner

Vs.

Santhosh(died)

1.Marimuthu

2.Andimuthu

3.Govindasamy

4.Periyanayagam

5.Shanthi

6.Babu

7.Sangeetha

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the III Additional District Munsif Court at Kallakurichi dated 04.07.2015 in IA.No.1170 of 2015 in OS.No.788 of 2006.

For Petitioner : Mr.P.Valliappan

For Respondents

For R2 : Mr.T.Arunkumar

R1,3 to 7 : Notice served

CRP.PD.No.3587 of 2015

Jayaprakash

..Petitioner

Vs.

Santhosh(died)

1.Marimuthu

2.Andimuthu

3.Govindasamy

4.Periyanayagam

5.Shanthi

6.Babu
7.Sangeetha

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the III Additional District Munsif Court at Kallakurichi dated 04.07.2015 in IA.No.1171 of 2015 in OS.No.788 of 2006.

For Petitioner : Mr.P.Valliappan

For Respondents

For R2 : Mr.T.Arunkumar

R1,3 to 7 : Notice served

COMMON ORDER

The present Civil Revision Petitions are arising out of fair and decreetal order of the III Additional District Munsif Court at Kallakurichi dated 04.07.2015 in IA.Nos.1169, 1170 & 1171 of 2015 in OS.No.788 of 2006.

2. In all the civil revision petitions, the petitioner is the plaintiff. He filed suit for declaration and injunction in respect of the suit property as against the respondents. The petitioner is claiming the suit property by way of adverse possession. By the open peaceful

and continuous possession and enjoyment of the suit properties by the plaintiff and his predecessors for over the statutory period , the plaintiff had also had his title perfected by adverse possession. When it being so, the suit is of the year 2006. In the year 2015, the petitioner filed petitions for reopen and recall for marking documents, that too, when the suit was posted for judgment. Therefore, those petitions are only to fill up the lacuna which causes prejudice to the respondents. In fact, the petitioner already filed petitions to reopen and recall to mark certain documents which were admitted on two occasions. The present petitions are filed on third occasion for the very same relief. However, the learned counsel for the petitioner also relied upon the judgment in the case of **K.K.Velusamy Vs. N.Palanisamy** reported in **2011 (3) CTC 422**, wherein it is held as follows:

"16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bonafide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the

witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

3. In the case on hand, admittedly the suit of the year 2006. When the matter was posted for judgment, after hearing both the sides, the petitioner came forward with these petitions to reopen and recall to mark additional documents.

4. On perusal of the documents which is intended to be marked by the plaintiff is dated 24.02.1998, according to the petitioner, the said document was executed by one Poongavanammal in favour of the defendant. However, on perusal of the affidavit filed in support of the petitions, no reasons have been stated by the petitioner herein. Therefore, the above judgment is not applicable to the case on hand. Hence, this Court finds no irregularity or infirmity in the order passed by the court below.

5. Accordingly, all the civil revision petitions are dismissed. Considering that the suit is of the year 2006, the trial court is directed to dispose of the suit within a period of 30 days from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

25.01.2021

Speaking/Non-speaking order

Index : Yes/No

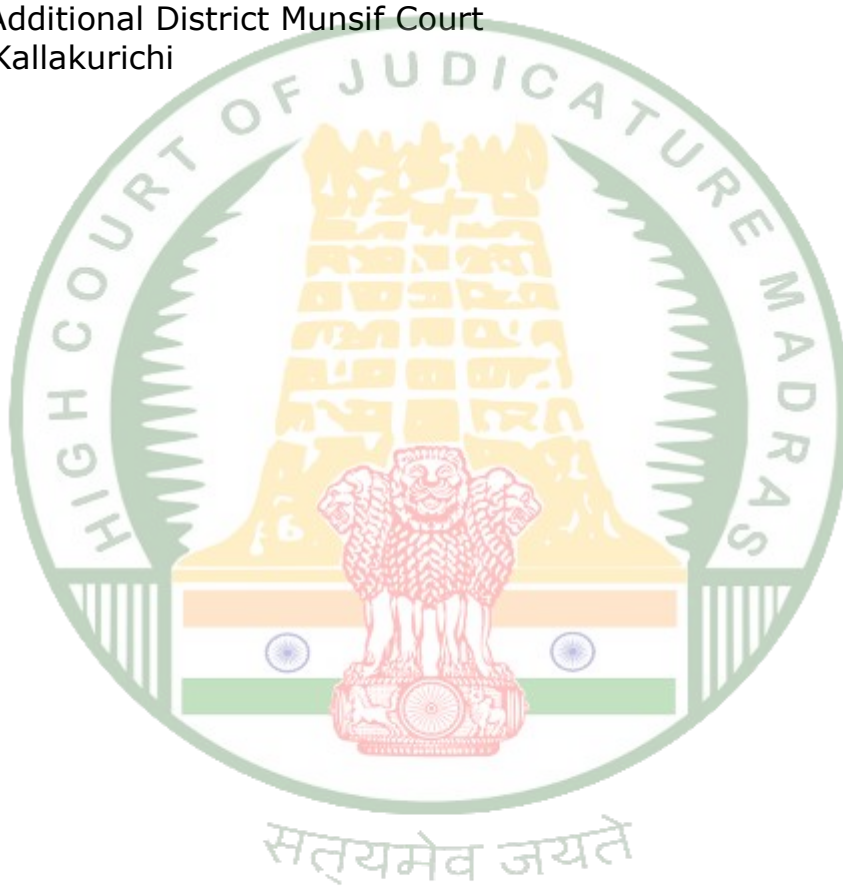
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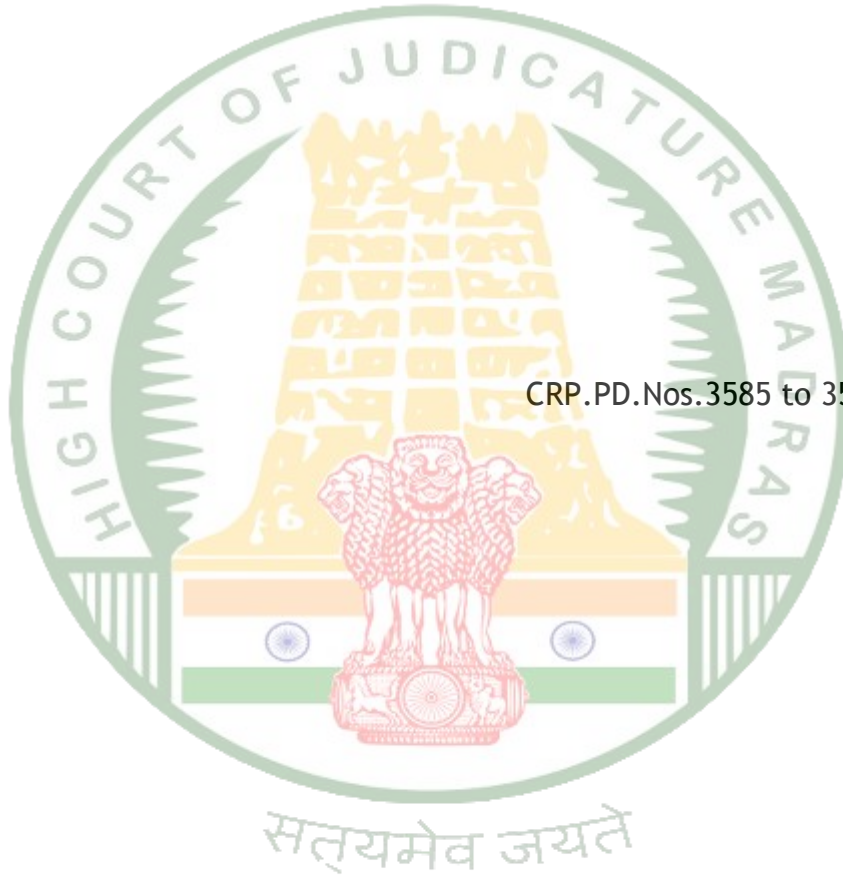
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at Kallakurichi



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G.K.ILANTHIRAIYAN,J.

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