

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

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

CRP.PD.No.3814 of 2015

and

MP.No.1 of 2015

1.Raju
2.Sekar
3.Alamelu

..Petitioners

Vs.

1.C.Venkateswaran(died)
2.K.Balamurugan
3.K.Boopathy
4.C.Parvathi

(R4 brought on record as LR of the
deceased R1 viz., C.Venkateswaran
vide court order dated 15.02.2021 made
in CMP.No.14144 of 2020 in
CRP.PD.No.3814 of 2015)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 10.04.2015 made in IA.No.1304 of 2014 in OS.No.22 of 2011 on the file of the learned District Munsif Court, Sankari.

For Petitioners : Mr.N.Manokaran

For Respondents

R1 : died(steps taken)

For R2 & 3 : M/s.D.Sathya

For R4 : Mr.R.Marudhachalamurthy

ORDER

This civil revision petition is directed as against the fair and decretal order dated 10.04.2015 made in IA.No.1304 of 2014 in OS.No.22 of 2011 on the file of the learned District Munsif Court, Sankari thereby dismissing the petition for amendment of the plaint.

2. The petitioners are the plaintiffs. The respondents are the defendants. The plaintiffs filed suit for declaration in respect of the suit property admeasuring 1.15.0 hectares comprised in survey No.83/2 situated at Sankari Village, Sankari Taluk, Salem District. On perusal of the plaint, the plaintiffs themselves averred that the Government also had taken 25 cents of the land from the first defendant for laying road to nearby housing colony. The respondents also filed written statement and stated that it is true that the Government acquired 25 cents of land in survey No.83/2 for laying the road and compensation amount was given to the first defendant because he is the owner and enjoyer of the said acquired land. After examination of PW1 and while PW1 was in box for

further cross examination, the petitioners filed petition to deduct 25 cents of the land from the suit property for the reason that already the said portion of the suit property was acquired to lay road by the Government. In fact, the first respondent was also paid compensation. The trial dismissed the same only for the reason that the petitioners failed to prove that the land admeasuring 25 cents were already acquired from the first defendant and he was paid compensation.

3. The learned counsel for the respondents submitted that the petitioners failed to prove that in spite of their due diligence they could not able to state correct extent of the suit property. The present petition was filed after commencement of trial and as such they have to prove that in spite of their due diligence they could not able to file petition within time. After filing the suit, the respondents filed written statement on 20.09.2011, in which they categorically averred that the land of 25 cents were already acquired for the purpose of laying load. Even then, the petitioners did not take any step to amend the plaint correctly. After examination of PW1 in part, the present petition has been filed. Therefore, it is clearly barred by limitation. In support of his contention, he also relied upon the judgment in the case of **L.C.Hanumanthappa Vs.**

H.B.Shivakumar reported in **(2016) 1 SCC 332** in respect of limitation, in which the Hon'ble Supreme Court of India held as follows:

"29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original Written Statement itself dated 16.05.1990, the Defendant had clearly put the Plaintiff on notice that if had denied the Plaintiff's title to the suit property. A reading of an isolated paragraph in the Written Statement, namely, Para 2 by the Trial Court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original Written Statement reads as a whole unmistakably indicates that the Defendant had not accepted the Plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28.03.2002 had expressly remanded the matter to the Trial Court, allowing the Defendant to raise the plea of limitation. There can be no doubt that on an application of Khatri Hotles (P) Ltd., the right to sue for declaration of title first arose on the facts of the present case on 16.05.1990 when the original Written Statement clearly denied the Plaintiff's title. By 16.05.1993 therefore a suit based on declaration of title would have become timebarred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the Court which allowed the amendment expressly allowed is subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued infavour of the Defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the

High Court. The present appeal is accordingly dismissed".

4. In the case on hand, the petitioners did not file petition to include any prayer of declaration. They filed petition only to deduct the extent from the relief sought for in respect of the entire property since some extent i.e. 25 cents of the suit property were already acquired by the Government for laying the road. Further the petitioners did not ask for new relief of declaration in respect of any other suit property. Therefore, the above judgment is not helpful to the case of the respondents herein.

5. That apart, the court below dismissed the petition only on the ground that the petitioners failed to produce any of the document to prove that the portion of the land was already acquired by the Government to lay road. On perusal of the written statement, the respondents admitted that the Government acquired 25 cents of the suit property comprised in survey No.83/2 for laying road and compensation was also paid to the first defendant. Therefore, the admitted fact need not be proved before the trial court. Further if the extent of the suit property is deducted, no prejudice would be caused to the respondents.

6. In view of the above discussion, this civil revision petition is allowed and the order dated 10.04.2015 passed in IA.No.1304 of 2014 in OS.No.22 of 2011 on the file of the learned District Munsif Court, Sankari is set aside. It is made clear that the respondents are permitted to file their additional written statement. Further, considering that the suit is of the year 2011, the trial court is directed to complete the trial within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

25.02.2021

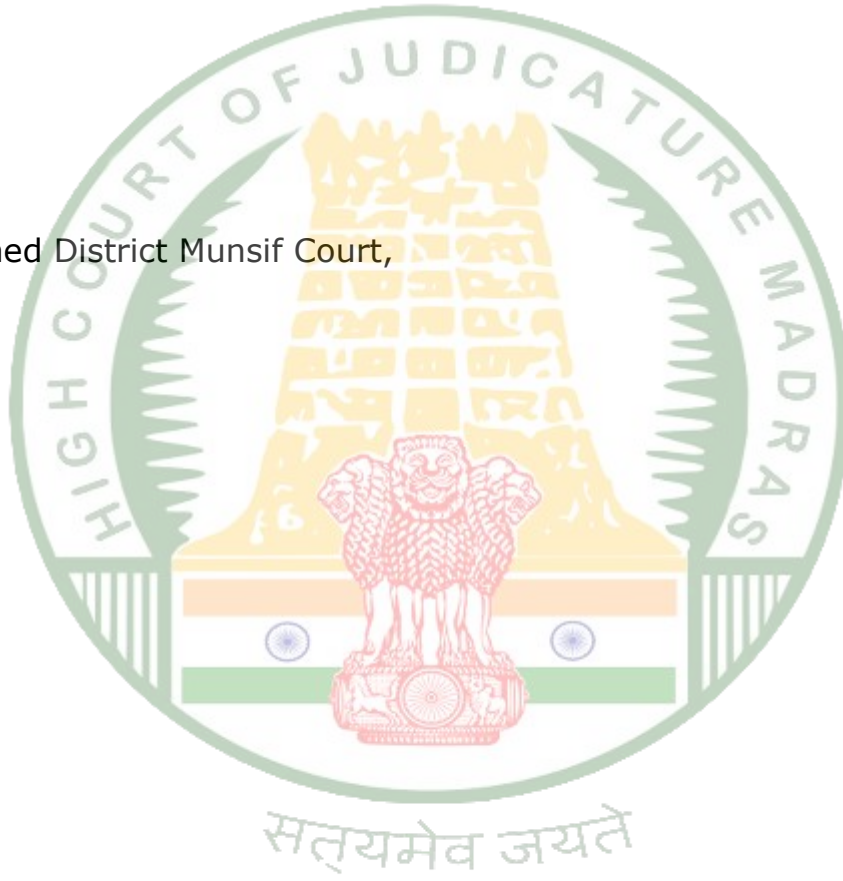
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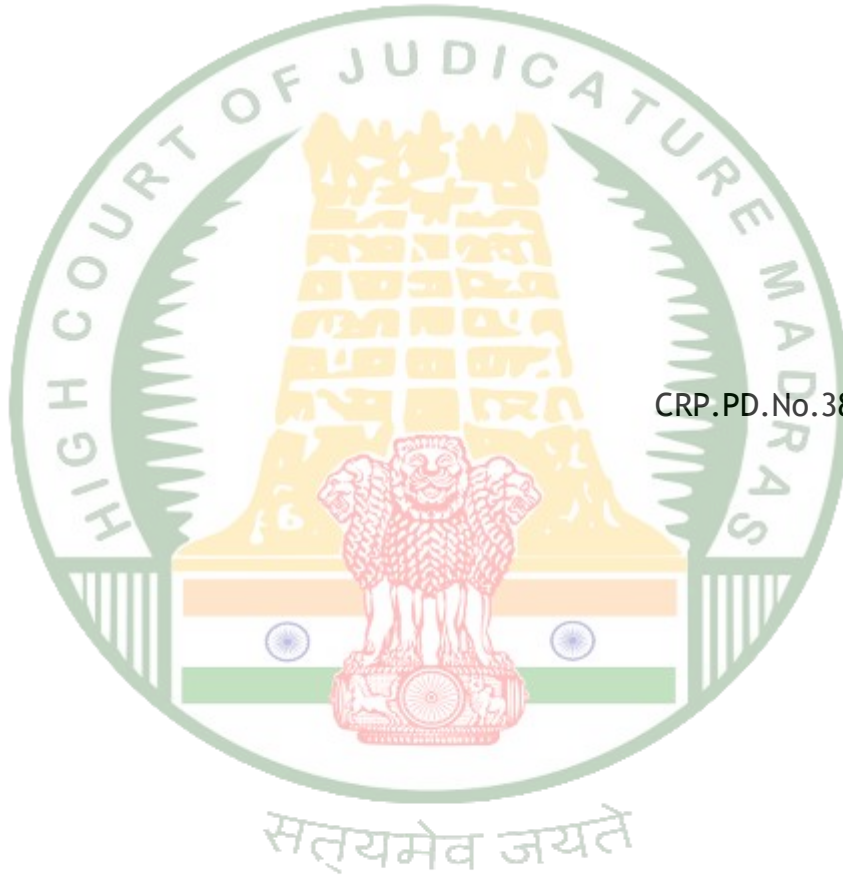
The learned District Munsif Court,
Sankari.



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G.K.ILANTHIRAIYAN,J.

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