

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

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

CRP.PD.Nos.1626 and 3626 of 2018

and

CMP.Nos.8795 and 20234 of 2018

CRP.PD.No.1626 of 2018

P.Sakthivel

... Petitioner

Vs.

1. Palaniammal
2. Muthayammal

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 21.03.2018 made in I.A.No.296 of 2018 in O.S.No.554 of 2012 on the file of the District Munsif of Avinashi and allow this Civil Revision Petition.

For Petitioner : Mr.S.Kumaresan

For Respondents : Mr.C.Munusamy (for R-1)
: No Appearance (for R-2)

CRP.PD.No.3626 of 2018

Palaniammal

... Petitioner

Vs.

1. Muthayammal
2. Sakthivel

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 24.08.2018 made in I.A.No.1052 of 2018 in O.S.No.554 of 2012 on the file of the District Munsif of Avinashi and allow this Civil Revision Petition.

For Petitioner : Mr.C.Munusamy

For Respondents : Mr.S.Kumaresan

COMMON ORDER

C.R.P(PD) No.1626 of 2018 is directed as against the fair and decretal order passed in I.A.No.296 of 2018 in O.S.No.554 of 2012 dated 24.08.2018 on the file of the learned District Munsif, Avinashi, thereby dismissing the petition seeking amendment of plaint.

2. C.R.P(PD) No.3626 of 2018 is directed as against the fair and decretal order passed in I.A.No.1052 of 2018 in O.S.No.554 of 2012 dated 24.08.2018 on the file of the learned District Munsif, Avinashi, thereby dismissing the petition to permit the second defendant to transpose herself as second plaintiff.

3. The petitioner in C.R.P.No.1626 of 2018 is the plaintiff and the petitioner in C.R.P.3626 of 2018 is the first defendant. The plaintiff filed a suit for declaration and permanent injunction in respect of the suit properties. After a period of 7 years from the date of the suit, the plaintiff filed a petition for amendment for the reason that the plaintiff filed the suit for declaration. As per the Will dated 05.06.1997, the first respondent in C.R.P.No.3626 of 2018 was given life estate of the suit properties. The Will had been acted upon and she is in possession and enjoyment of the suit properties. After her life time, the suit properties will devolve absolutely upon the plaintiff. Though the plaintiff has prayed for declaration in respect of the entire properties pertaining to Item No.1, Item No.2 and house property of Item No.3 of the suit properties. Therefore, the petitioner sought for amendment in the plaint as follows:-

“In the original plaint page No.3 after the para No.IX Add X. As per the Will dated 05.06.1997 the 2nd defendant was given life estate of Item:1, Item:2 and house property in Item No:3 of the suit properties. The 2nd defendant is in possession of Item:1, Item:2 and house property in Item:3. After her life time the properties will

devolve absolutely on the plaintiff.

*In the original plaint page No.5 para XVI a. Add,
“Subject to the Life Estate given to the 2nd defendant and
after her life time”.*

4. On a perusal of the records, it reveals that, when the suit was posted for cross examination of D.W.1, the present petition has been filed. In fact, already, on the side of the plaintiff, P.W.1 to P.W.4 were examined and they have fully been cross examined elaborately. Therefore, the present petition filed is only to fill up the lacunae and nothing else. That apart, on a perusal of the written statement, the first defendant categorically stated that, in any event, as per the terms of the alleged Will dated 05.06.1997, the properties concerned under the 'Will' should be enjoyed by the second defendant till her life time and thereafter, the same has to devolve upon the plaintiff. Now, the second defendant is very much alive and so the plaintiff cannot claim title to the properties, which are the subject matter of the 'Will'. As such, the Court below rightly dismissed the petition seeking amendment of the plaint and this Court finds no infirmity or illegality in the order passed by the Court below.

5. After dismissal of the application for amendment of plaint as instructed by the plaintiff, the second defendant filed a petition to transpose herself as second plaintiff in the suit as stated above. While the petition was posted for cross examination of D.W.1, that too after dismissal of the amendment petition, the present petition had been filed. The Court below rightly dismissed the same and this Court finds no infirmity or illegality in the order passed by the Court below.

6. In view of the above discussion, these Civil Revision Petitions are dismissed. Since the suit is of the year 2012, the trial Court is directed to dispose of the suit in O.S.No.554 of 2012 within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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14.06.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

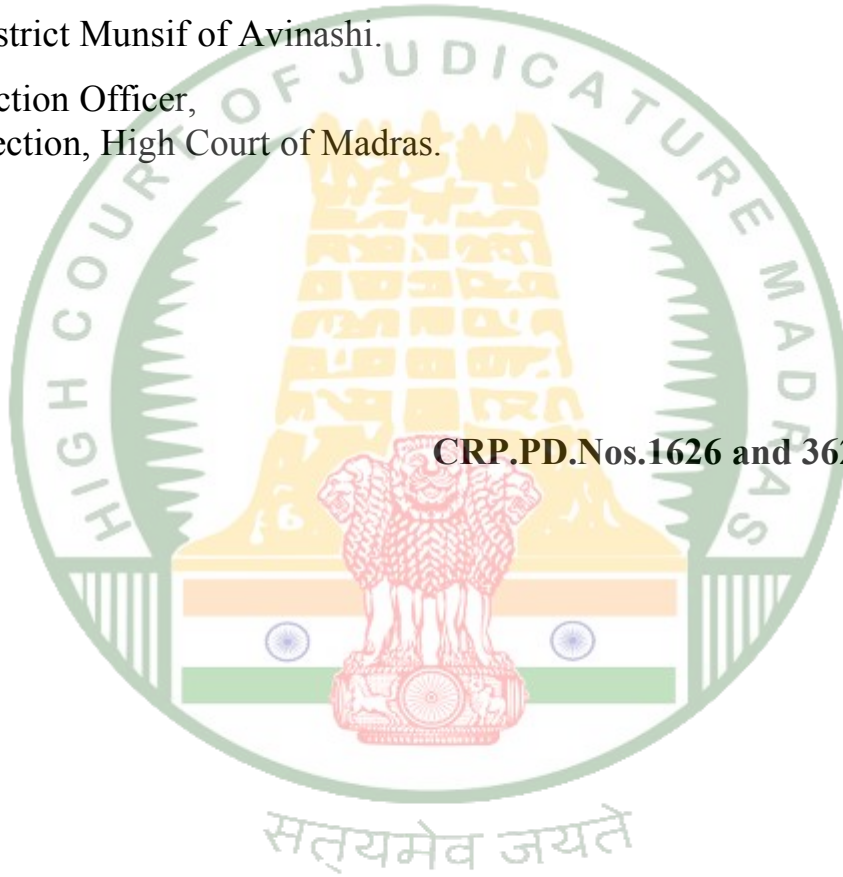
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G.K.ILANTHIRAIYAN,J.

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To

1. The District Munsif of Avinashi.
2. The Section Officer,
V.R.Section, High Court of Madras.



CRP.PD.Nos.1626 and 3626 of 2018

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C.R.P (PD) Nos.1626 and 3626 of 2018
C.M.P.Nos. 8795 and 20234 of 2018

G.K.ILANTHIRAIYAN,J.

These matters are listed today under the caption “for clarification”. It is clarified that paragraph Nos.2, 5 and 6 of this Court's earlier order dated 14.06.2021 in C.R.P (PD) Nos.1626 and 3626 of 2018, shall be modified to the following effect:

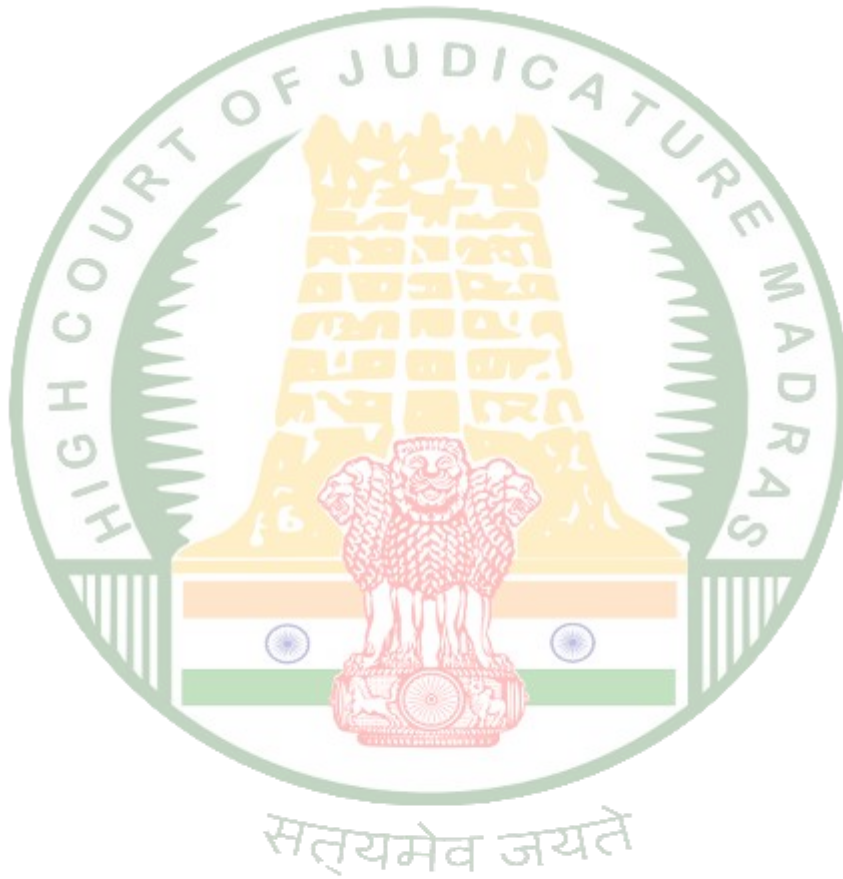
“2. C.R.P(PD) No.3626 of 2018 is directed as against the fair and decretal order passed in I.A.No.1052 of 2018 in O.S.No.554 of 2012 dated 24.08.2018 on the file of the learned District Munsif, Avinashi, thereby allowing the petition to permit the second defendant to transpose herself as second plaintiff.”

“5. After dismissal of the application for amendment of plaint as instructed by the plaintiff, the second defendant filed a petition to transpose herself as second plaintiff in the suit as stated above. While the petition was posted for cross examination of D.W.1, that too after

dismissal of the amendment petition, the present petition had been filed.

Therefore, the Court below ought not to have allowed the same and it is

liable to be set aside.



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G.K.ILANTHIRAIYAN,J.

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“6. In view of the above discussion, C.R.P (PD) No.1626 of 2018 is dismissed and C.R.P (PD) No.3626 of 2018 is allowed and the order passed in I.A.No.1052 of 2018 in O.S.No.554 of 2012 dated 24.08.2018 is hereby set aside. Since the suit is of the year 2012, the trial Court is directed to dispose of the suit in O.S.No.554 of 2012, within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

29.06.2021

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C.R.P (PD) Nos.1626 and 3626 of 2018
C.M.P.Nos. 8795 and 20234 of 2018