

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2021

CORAM:

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

CRP (PD) No.2050 of 2018

Elayarani

... Petitioner

Vs.

1. Parameswarn

2. Rajambal

3. Sundaram

4. Selvi

5. Ramasamy

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 19.01.2018 passed in I.A.No.76 of 2017 in O.S.No.3 of 2012 on the file of the III Additional District Court, Kallakurichi and allow the above Civil Revision Petition.

For Petitioner

: Mr.A.K.Kumarasamy
Senior Counsel for
Mr.S.Kaithamalai Kumaran

For Respondents

: Mr.R.Balasubramanian
(for R-1 & R-2)

ORDER

This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.76 of 2017 in O.S.No.3 of 2012 dated 19.01.2018 on the file of the III Additional District Court, Kallakurichi, thereby, allowing the petition seeking amendment of plaint.

2. The petitioner is the fourth defendant in the suit filed by the first and second respondents herein for declaration and injunction. Pending the suit, the respondents 1 and 2 filed a petition seeking amendment of plaint. The same was allowed and aggrieved by the same, the present Civil Revision Petition is filed.

3. Mr.A.K.Kumarasamy, learned Senior Counsel for the petitioner submitted that the petitioner is the fourth defendant in the suit filed by the respondents 1 and 2 herein. The present amendment petition has been filed after cross examination of D.W.3. In fact, the petitioner also filed a suit for declaration and partition in O.S.No.4 of 2012, which is a comprehensive suit in respect of the very same properties. All along, the respondents stated that the suit properties are ancestral properties. It is not mere typographical error, whereas the entire suit in O.S.No.3 of 2012

is based on the plea that the suit properties are ancestral properties and hence, the sale deeds executed unilaterally by the plaintiffs' father in respect of ancestral properties, are not binding on the plaintiffs. He further submitted that the Court below simply cited the judgments and without stating any reason, mechanically allowed the petition for amendment. It would cause serious prejudice to the petitioner.

4. Per contra, the learned counsel appearing for the respondents 1 and 2 submitted that the respondents 1 and 2 filed the suit for declaration and injunction in respect of the sale deeds dated 16.11.1998 and 09.11.1994 executed in favour of the second defendant as well as the fifth defendant. While filing the suit, the suit properties were mentioned as ancestral properties. The present petition is filed by none other than the daughter of the deceased/first defendant and she had also filed the said suit for partition in O.S.No.4 of 2012 and it is pending. Therefore, the present amendment petition is no way going to effect the rights of the petitioner. Hence, the amendment sought for is only to substantiate the case of the plaintiffs and nothing to do with the petitioner herein.

5. Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 and 2.

6. The petitioner is the fourth defendant in the suit filed by the respondents 1 and 2 herein for declaration and injunction in respect of the suit properties. After cross examination of D.W.3, the respondents 1 and 2 herein filed a petition seeking amendment as follows:-

“1. பிராதிஸ் 2-வது பக்கத்தில் 3-வது வரியில் “பூர்வீக” என்பதை அடித்துவிடவேண்டும்.”

7. Originally, the plaintiffs filed the suit mentioning the entire suit properties as ancestral properties, whereas they want to now amend by deleting the word "ancestral" in respect of the suit properties. The first respondent was examined as D.W.3 and he categorically stated that the suit properties do not only to belong to his father viz., the deceased/first defendant in the suit and they have no knowledge about the nature of title to the suit property. That apart, on a perusal of the plaint, they all along stated that the suit properties are ancestral properties. Therefore, the

amendment sought for by the respondents 1 and 2 would change the entire nature of the suit and it would effect the rights of the petitioner herein.

8. In view of the above discussion, the order passed by the Court below is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.76 of 2017 in O.S.No.3 of 2012 dated 19.01.2018 is hereby set aside. However, the Court below is directed to dispose of the suit in O.S.No.3 of 2012 within a period of six months from the date of receipt of a copy of this order. No costs.

14.06.2021

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Index :Yes/No

Internet : Yes/No

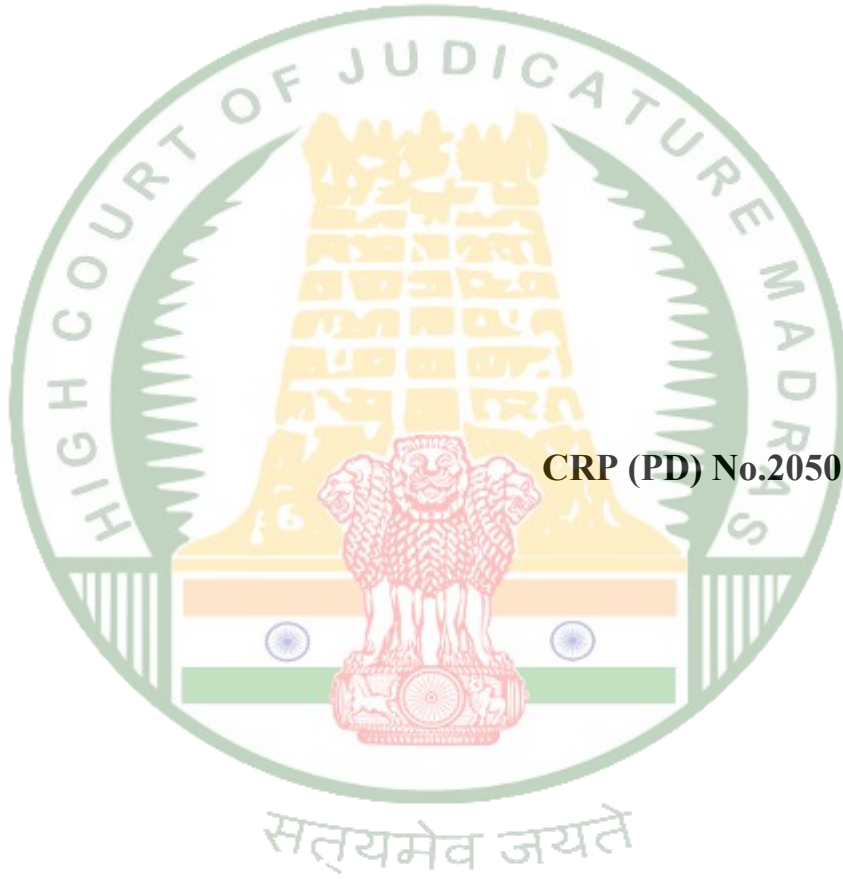
To

1. The III Additional District Court, Kallakurichi

2. The Section Officer,
V.R. Section, High Court of Madras.

G.K.ILANTHIRAIYANJ.,

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