

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

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

C.R.P.(PD) No.3608 of 2016
and C.M.P.No.18362 of 2016

1. Visalakshi
2. Chitravathi Petitioners

Vs.

1. V.P.Kumarasami
2. Mohanasundari
3. Radhamani
4. Venkateswaran
5. Mallika
6. Gayathri
7. Sathya
8. Arulmurugan
9. Padmavathi
10. Malathi
11. Thenmozhi
12. Nallasamy
13. Rameshkumar
14. Murugesan

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 20.09.2016 made in I.A.No.321 of 2016 in O.S.No.180 of 2015 on the file of the learned First Additional District Court, Erode.

For Petitioners : Mr.N.Manokaran
For Respondents
For R1 to R4
& R9 to R11 : Mr.Annagandhi
For Mr.I.C.Vasudevan
For R5 to R8 : Mr.V.P.Sengottuvel
For R12 to R14 : Not ready in notice

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 20.09.2016 passed by the learned First Additional District Court, Erode, in I.A.No.321 of 2016 in O.S.No.180 of 2015, thereby dismissing the petition seeking amendment of prayer.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit in O.S.No.180 of 2015 for partition. While pending the suit, the respondents filed written statement stating that in respect of partition of suit properties, it was already settled in favour of one V.P.Periasamy. Thereafter, the petitioners filed petition for amendment to include the prayer of declaration declaring that the settlement deed dated 25.08.2005 is not true, valid and genuine and also permanent injunction in respect of the suit property to be included in the suit for partition.

3. On perusal of amendment sought for by the petitioners, it revelled that their grandmother had been gifted some properties from her mother and some of the properties were purchased in her name. The fourth defendant and V.P.Periasamy obtained gift settlement deeds, power of attorney and Will in their favour from the aged old Chinnammal. The said properties were omitted to include in the partition suit due to over sight. They have got certificate copy of the relevant document on 08.08.2016. Except these avernments nothing stated about the properties which is under challenged by way of amendment.

4. In this regard the learned counsel appearing for the respondents relied upon the judgment reported in (2019) 4 SCC 332 in the case of **M.Revanna Vs. Anjanamma (dead) by LRs and ors**, which reads the Hon'ble Supreme Court of India held as follows :-

"7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule 17 of the CPC virtually prevents an application for

amendment of pleadings from being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."

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5. He also relied upon the judgment of the Hon'ble Supreme Court of India reported **(2020) 11 SCC 549** in the case of ***Pandit Malahari Mahale Vs. Monika Pandit Mahale and ors***, as follows :-

"7. In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In Vidyabai & Ors. v. Padmalatha & Anr. [(2009) 2 SCC 409], this Court observed in para 19 as under:

"19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

The Hon'ble Supreme Court of India categorically held that burden on

person seeking amendment after commencement of trial to show due diligence, such an amendment could not have been sought earlier. There cannot be any dispute than an amendment cannot be claimed as a matter of right and under all circumstances.

6. In the case on hand as stated *supra*, the petitioners did not even show the due diligence, such an amendment could not have been sought earlier. That apart the grandmother of the petitioners died even as early as on 30.01.2007. In the said settlement deed, it is categorically stated that V.P.Periasamy has taken possession of the property which was settled in his favour. Therefore, on the date of the death of their grandmother viz., Chinnammal ie., on 30.01.2007, the cause of action arose in the present suit. Therefore, the Court below rightly dismissed the petition and this Court finds no illegality or infirmity in the order passed by the Court below.

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7. Accordingly, the Civil Revision Petition stands dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

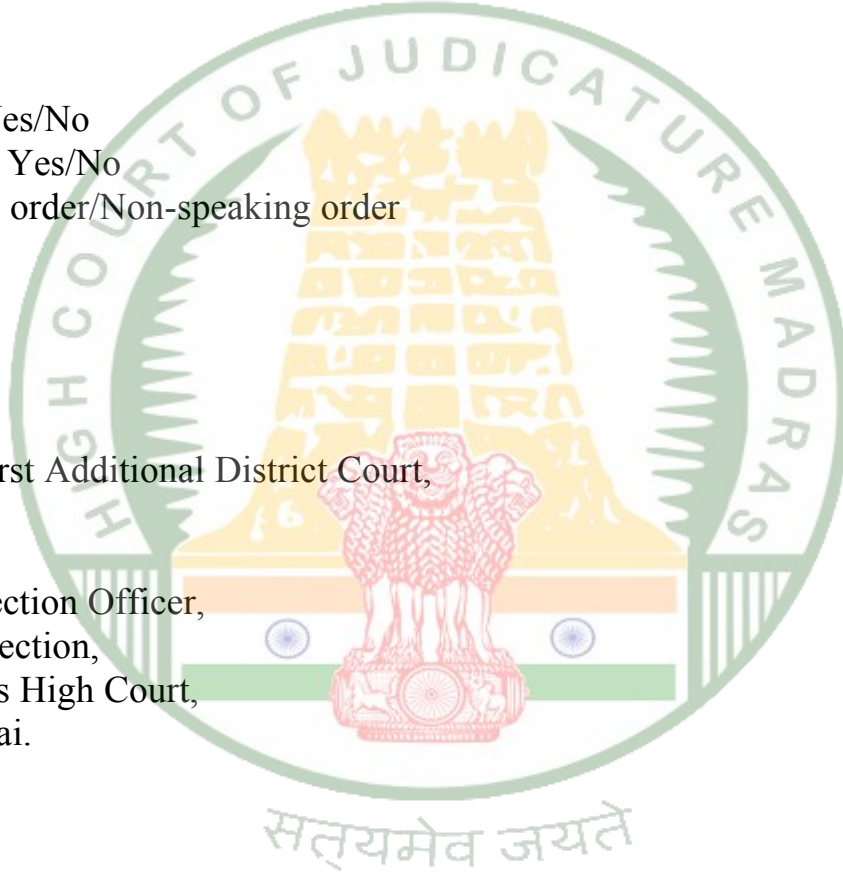
Speaking order/Non-speaking order

rts

To

1. The First Additional District Court,
Erode.

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

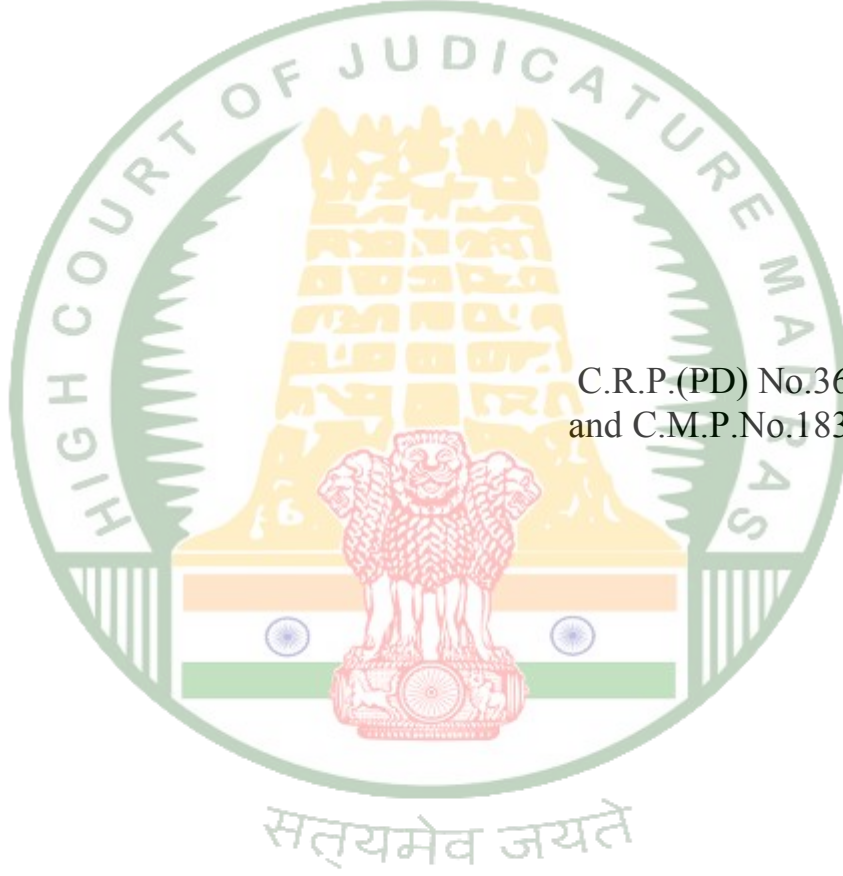


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