

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM

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

C.R.P.(NPD) No.3658 of 2016
and CMP No.18630 of 2016

M.Duraisamy

... Petitioner

Vs.

P.M.Thangavel

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 18.08.2016 made in I.A.No.220 of 2016 in A.S.No.52 of 2015 on the file of the II Additional District Court, Erode.

For Petitioner : Mr.C.Ramraj

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 18.08.2016 passed by the II Additional District Judge, Erode in I.A.No.220 of 2016 in A.S.No.52 of 2015, thereby allowing the petition to amend the plaint filed by the petitioner to include another property in the partition suit.

2. The revision petitioner is the plaintiff. He filed a suit for partition as against the respondent in respect of the suit properties. By the Judgment and Decree dated 18.04.2015 except “B” Schedule property other properties were partitioned and decreed in favour of the petitioner/plaintiff and the respondent.

3. Aggrieved by the said order, the respondent filed an Appeal Suit against the decree of the partition suit as against the 'A', 'B' 'C' and 'D' schedule properties. Pending Appeal Suit, the petitioner/plaintiff also filed a cross-objection in respect of 'B' Schedule property and the respondent filed a petition to amend the plaint by including one more property for partition.

4. A perusal of the affidavit filed in support of the petition to amend the plaint, the property bearing Door No.D-42 in R.S.No.1255/2 situated at Kollampalayam, Erode was allotted by the Tamil Nadu Housing Board in favour of the petitioner and the respondent father viz., Muthusamy. The said Muthusamy entered into an agreement of sale in the said property with his sister son's wife. Thereafter, he also executed a

Power of Attorney in respect of the said property in favour of his sister's son. Thereafter he died. Though, the amendment is sought for in the Appeal Suit, the suit is filed for partition and as such the Appeal Suit is also only a continuation of suit proceedings and the amendment can be allowed even in the lost appeal. Though, the said property is not registered in favour of said Muthusamy, it was allotted in his favour and the Power of Attorney executed by him also expires. Therefore, the Court below rightly allowed this petition and included the said property in the plaint for partition.

5. This Court finds no illegality or infirmity in the order passed by the Court below. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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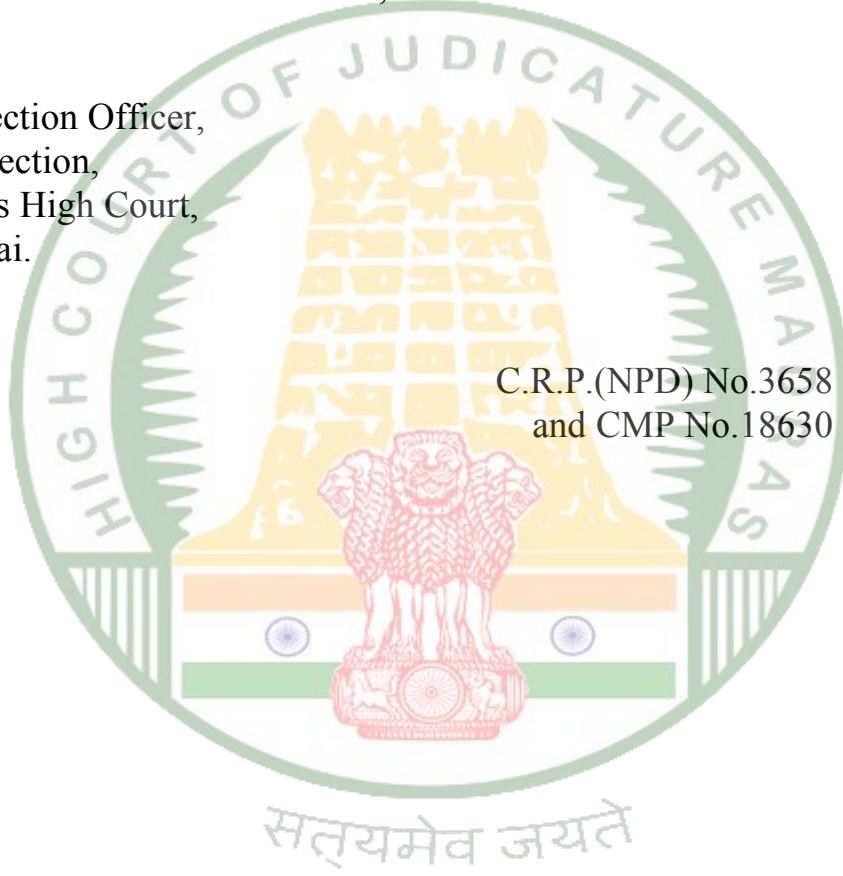
C.R.P.(NPD)No.3658 of 2016

G.K.ILANTHIRAIYAN, J.

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To

1. The II Additional District Court,
Erode.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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