

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2020

PRONOUNCED ON : 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.229 of 2017

CMP.No.1013 of 2017

(Through Video Conferencing)

M.Krishnamurthy

Petitioner

Vs

1. The Assistant Commissioner
Hindu Religious and Charitable Endowment
Erode

2. The Thakkar, Arulmigu Pirattiamman Thirukoil
Chennimalai

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, against the fair and decreetal order dated 26.10.2016, passed in IA.No.208 of 2016 in OS.No.320 of 2008, by the District Munsif Cum Judicial Magistrate, Perundurai, Erode.

For Petitioner : Mr.R.Kannan

For Respondent : Mr.Manikandan-R1
Mr.Rajesh Vivekananthan-R2

ORDER

1. This Civil Revision Petition has been filed, against the fair and decreetal order dated 26.10.2016, passed in IA.No.208 of 2016 in OS.No.320 of 2008,

by the District Munsif Cum Judicial Magistrate, Perundurai, Erode.

2. The facts of the case, in a nutshell, are that the Plaintiff is the Petitioner and the Defendants are the Respondents. The suit was filed for permanent injunction, restraining the Defendants from interfering with the peaceful possession and enjoyment of the suit property. The suit was dismissed and on an appeal, the suit was remanded back to the Trial Court to mark documents and to lead evidence. Thereafter, the Plaintiff has filed the present application, seeking to amend the plaint, by including the prayer for declaration, by rectifying the survey numbers of the suit properties. The said application was dismissed by the impugned order. Hence, this Civil Revision Petition has been filed by the Plaintiff.
3. The learned counsel for the Petitioner has submitted that the amendment was sought for changing the survey numbers and for including the prayer for the relief of declaration and that in order to avoid multiplicity of proceedings, the amendment petition ought to have been allowed and adding the relief of declaration would not change the cause of action, as there are no new set of facts and hence, the amendment petition is to be allowed, by allowing this Civil Revision Petition. The learned counsel Petitioner has relied on **2006 4 MLJ 1201 (P.K.P.M. Khader Meera Vs. Hameeda Bivi and others)**, **AIR 2002 SC 3369 (Sampath Kumar Vs. Ayyakannu)**, **2004 1 MLJ 100 (Sellammal Vs. M.Natesan)** and **2001 2 MLJ 387 (So.Vaijanthi Vs. Raghuraman)**.
4. The learned counsel for the Respondents has submitted that originally the

suit was dismissed on merits and on an appeal, the lower appellate court had remanded the matter back to the Trial Court only for marking the documents produced before it and to lead evidence and that there was an another suit in OS.No.262 of 2012 filed by the Petitioner for the same cause of auction and hence, the present suit is hit by the principles of resjudicata and that after conclusion of the trial, the amendment petition cannot be entertained and accordingly, this Civil Revision Petition is to be dismissed. The learned counsel for the Respondents has relied on 2001 2 MLJ 712 (LMS.Gani Mohamed and Company Vs. Singapore Airlines Limited), 2005 3 MLJ 294 (Loganathan Vs. Kaliappa Gounder), 2008 8 MLJ 307 SC (Rajkumar Guruwara Vs. S.K.Sarwagi and CO Pvt. Limited) and 2009 2 MLJ 227 (Meenambal Vs. C.Senthilkumar).

5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
6. On perusal of the records, it is seen that the suit is of the year 2008. Originally the suit was filed for seeking permanent injunction, restraining the Defendants from interfering with the peaceful possession and enjoyment of the suit property. After a full fledged trial, the suit was dismissed, by the judgement and decree dated 11.08.2011, on merits. As against the same, the Petitioner had filed an appeal in AS.No.17 of 2012. The lower appellate court had remanded back the suit, by judgement, dated 23.10.2012, only for the limited purpose of marking of documents and producing additional evidence. After the suit was remanded back to mark the documents and to

lead additional evidence, the present application has been filed in the year 2016 to amend the plaint, by adding the relief of declaration, rectifying the survey numbers of the suit property, belatedly only with a view to protract the proceedings.

7. It is not known as to why the Petitioner remained silent from taking steps to amend the suit property and to include the prayer of declaration, at the earlier point of time. Thus, there is total lack of exercise of due diligence by the petitioner for not bringing the correct facts at the earliest point of time. The amendment, which is sought to be carried out, by itself would show that it will change the nature and character of the suit and prejudice will be caused to the Defendants and it would complicate to decide the dispute between the parties. Such an amendment, altering the nature and character of the suit cannot be entertained.
8. In view of the above, this Court is of the opinion that considering the aforesaid aspects, the Trial Court is justified in passing the impugned order, dismissing the present amendment application, which warrants no interference by this Court.
9. In fine, this Civil Revision Petition is dismissed. There shall be a direction to the Trial Court to dispose of the suit, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected MP is closed.

23.02.2021

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The District Munsif Cum Judicial Magistrate, Perundurai, Erode

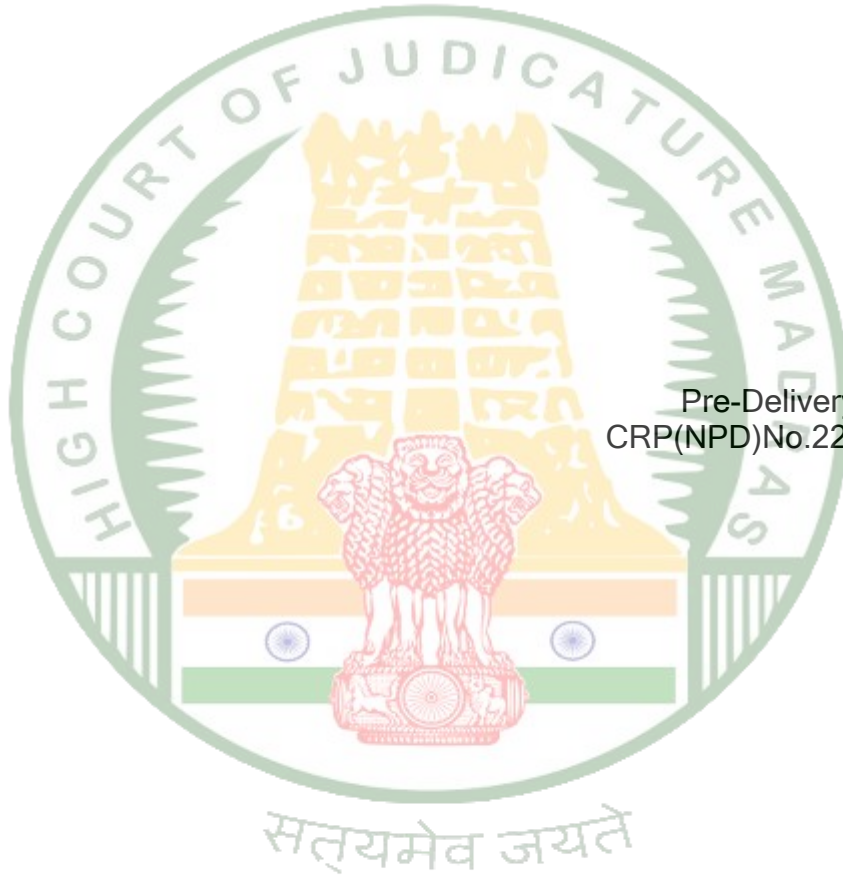


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A.A.NAKKIRAN, J.

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