

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

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

CRP.PD.No.3152 of 2017
and CMP.No.14800 of 2017

A.Pakir Masthan

..Petitioner

Vs.

R.Lakshmanan Chettiar

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.04.2017 made in IA.No.47 of 2017 in OS.No.40 of 2012 on the file of the learned Subordinate Judge, Tiruvarur.

For Petitioner : Mr.V.Chandrasekaran

For Respondent : Mr.S.Sounthar

ORDER

This civil revision petition is filed against the fair and decreetal order dated 17.04.2017 made in IA.No.47 of 2017 in OS.No.40 of 2012 on the file of the learned Subordinate Judge, Tiruvarur thereby partly allowing the petition for amendment and partly dismissed the petition for amendment.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit for recovery of possession in respect of 'B' schedule property which is part of the 'A' schedule property. While pending the suit, advocate commissioner was appointed to note down the physical features of the suit schedule property. On receipt of the commissioner's report, the respondent filed petition for amendment as follows:

(i) *In the short cause title of the plaint remove "represented by power agent Sirajudin"*

(ii) *In the long cause title remove the following "by power agent Sirajudin S/o Mohamed Ibrahim Muslim aged 55, residing at Pallivasal Street, Ketharimangalam"*

(iii) *In the last page of the cause title remove " represented by power agent Sirajudin"*

(iv) *In para III (4) line 6 amend 2 cents as "3 cents"*

(v) *In Description of property, 'A' sch, after Rs No 41/2B replace "3 cents (9 kuzhis)" instead of 4 cents and after the words 41/2c part "amend as "3 cents"*

(vi) *In schedule B, after the words North-South amend "36.25 feet"*

1308 sq ft or 3 cents "instead of 24 1/4 feet 873 sq ft or 2 cents.

(vii) In details of Valuation para amend Rs.2,61,900/- as "Rs.3,92,400/-

(viii) In Court fee amend Rs.19,643/- as Rs.29,430/-

(ix) In para Vi amend prayer (a) add "after removal of the superstructure" in the end

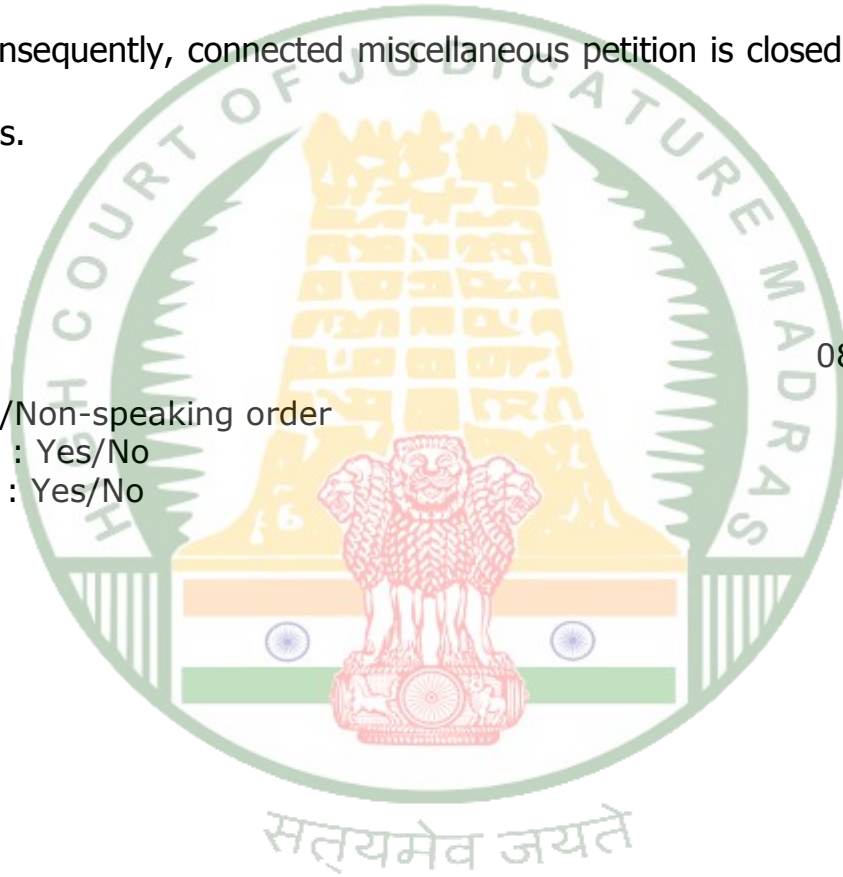
(x) In Para IV amend 2012 as "2010"

3. Except the amendment 1 to 3, other amendments sought for by the petitioner denied by the trial court. The fourth amendment is to correct the measurement as three cents from two cents in the property comprised in 'B' schedule property, i.e. in RS.No.41/2C. The suit is for recovery of possession and according to the petitioner, the defendant encroached some portion of the property owned by him in RS.No.41/2C. Therefore, both the parties have to prove their case by let in evidence and the suit cannot be decreed on the strength of the advocate commissioner's report. If there is an encroachment in respect of 'B' schedule property, whether it is 2 cents or three cents, it has to be recovered. Therefore, the amendment sought for by the petitioner herein would not cause any prejudice to the respondent and also would not change the cause of action as well as the nature of the suit.

4. Considering the above, this civil revision petition is allowed. Consequently, insofar as denial of amendment Sl.Nos.4 to 10, the IA.No.47 of 2017 in OS.No.40 of 2012 is allowed. Further, considering that the suit is of the year 2012, the trial court is directed to complete the trial within a period of nine months from the date of receipt of copy of this Court. Consequently, connected miscellaneous petition is closed. No order as to costs.

08.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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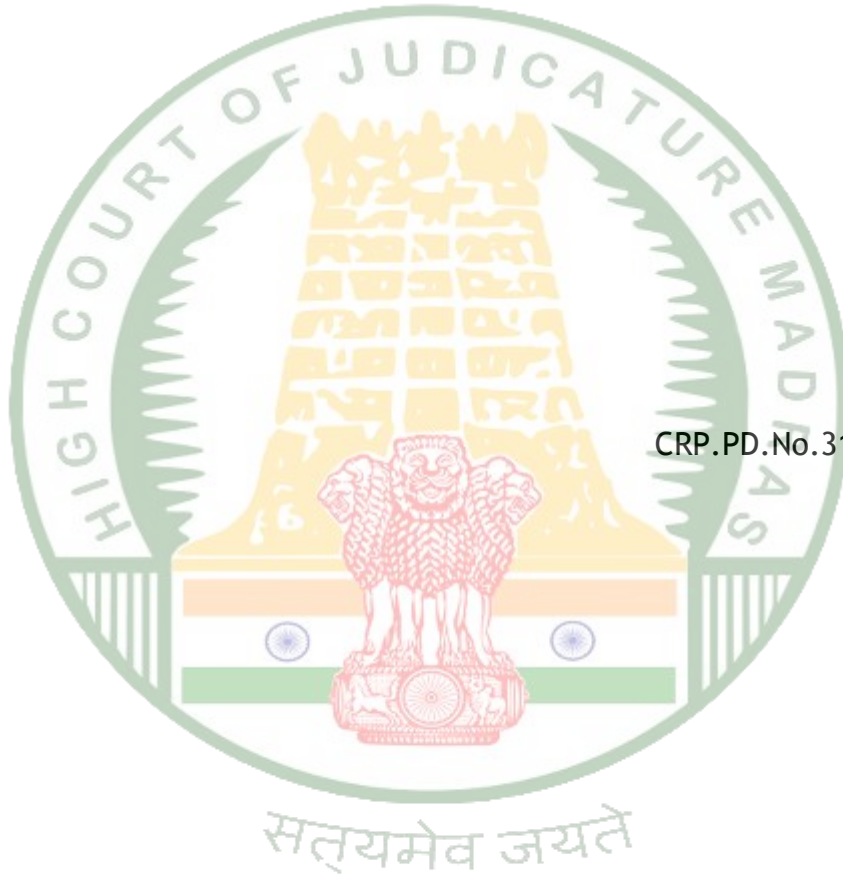
The Subordinate Judge,
Tiruvarur.



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G.K.ILANTHIRAIYAN,J.

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