

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.3532 to 3534 of 2017
and C.M.P.Nos.16325 to 16327 of 2017

1.Rangathal
2.Velusamy
3.Thangaraj

.. Petitioners in all C.R.Ps.

Vs.

1.Angathal
2.Jayalakshmi
3.Manonmani
4.Arunachalam

.. Respondents in all C.R.Ps.

Prayer in C.R.P.No.3532/2017: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.11.2016, made in I.A.No.814 of 2016 in O.S.No.1277 of 2016, on the file of the II Additional District Munsif Court, Coimbatore.

Prayer in C.R.P.No.3533/2017: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.11.2016, made in I.A.No.815 of 2016 in I.A.No.530 of

2016 in O.S.No.1277 of 2016, on the file of the II Additional District Munsif Court, Coimbatore.

Prayer in C.R.P.No.3534/2017: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.11.2016, made in I.A.No.816 of 2016 in I.A.No.531 of 2016 in O.S.No.1277 of 2016, on the file of the II Additional District Munsif Court, Coimbatore.

(In all C.R.Ps.)

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr.R.Swarnavel

COMMON ORDER

(The matter is heard through 'video conferencing/hybrid mode')

These Civil Revision Petitions are filed against the fair and decreetal orders dated 29.11.2016, made in I.A.No.814 of 2016 in O.S.No.1277 of 2016, I.A.No.815 of 2016 in I.A.No.530 of 2016 in O.S.No.1277 of 2016 and I.A.No.816 of 2016 in I.A.No.531 of 2016 in O.S.No.1277 of 2016, on the file of the II Additional District Munsif Court, Coimbatore.

2.The parties and issues involved in all the Civil Revision Petitions are one and the same and hence, they are disposed of by this common order.

3.The petitioners are defendants in O.S.No.1277 of 2016, on the file of the II Additional District Munsif Court, Coimbatore. The respondents filed the said suit for declaration, possession and permanent injunction, restraining the petitioners from in any way altering the physical feature of the suit property either by putting up construction or otherwise. The respondents also filed I.A.No.530 of 2016, for interim injunction and I.A.No.531 of 2016, for appointment of an Advocate Commissioner to visit the suit property. Pending suit and above two applications, the respondents filed I.A.Nos.814 to 816 of 2016 to amend the schedule of plaint in O.S.No.1277 of 2016, I.A.Nos.530 and 531 of 2016 and to include Survey Field No.438/2. According to the respondents, by oversight, S.F.No.438/2 was omitted to be mentioned in

the schedule. The same is neither wilful nor wanton. In the said applications, the petitioners did not file any counter affidavit. The counsel for the petitioners opposed the said applications before the learned Judge, contending that S.F.No.438/2 absolutely belongs to the petitioners and respondents have not filed any document to show that they are the owners of S.F.No.438/2. The applications are filed only to fill up the lacuna and prayed for dismissal of I.A.Nos.814 to 816 of 2016. The learned Judge, considering the materials placed before him, allowed all the applications, by separate orders dated 29.11.2016, holding that the respondents have filed suit for declaration that they are the owners of the suit property. Even though the petitioners claim that S.F.No.438/2 belongs to them, the same can be decided only after trial and ordered amendment.

4.The petitioners have come out with the present three Civil Revision Petitions against the said three orders dated 29.11.2016 made in I.A.No.814 of 2016 in O.S.No.1277 of 2016, I.A.No.815 of 20216 in

I.A.No.530 of 2016 in O.S.No.1277 of 2016 and I.A.No.816 of 2016 in I.A.No.531 of 2016 in O.S.No.1277 of 2016. Pending Civil Revision Petitions, the suit in O.S.No.1277 of 2016 on the file of the II Additional District Munsif Court, Coimbatore, was transferred to the District Munsif Court, Sulur and re-numbered as O.S.No.699 of 2017 and the same is pending.

5.The learned counsel appearing for the petitioners contended that the respondents are claiming title to the suit property. They ought to have given Survey Field Number in the plaint at the time of filing of the suit itself. The respondents have not filed any document to prove that they are the owners of S.F.No.438/2. The learned Judge failed to consider the fact that the present amendment will change the cause of action, character of the suit and it will lead to multiplicity of proceedings. The learned Judge failed to consider the contention of the petitioners in a fair manner and erred in holding that ownership of the property in S.F.No.438/2 can be decided only by considering the oral and documentary evidence and

prayed for allowing all the three Civil Revision Petitions.

6.The learned counsel for the respondents made submissions in support of the orders of the learned Judge and prayed for dismissal of the Civil Revision Petitions.

7.Heard the learned counsel appearing for the petitioners as well as the respondents and perused the entire materials available on record.

8.From the materials on record, it is seen that the respondents have filed O.S.No.699 of 2017 against the petitioners for declaration, possession and permanent injunction, in respect of the suit property. They also filed two applications in I.A.No.530 of 2016, for interim injunction and I.A.No.531 of 2016, for appointment of the Advocate Commissioner. Before the applications are heard and trial commenced, the respondents filed three more applications for amendment of schedule in the plaint and applications, to include Survey Field No.438/2 in the suit and in two

applications. According to the respondents, by inadvertance, the Survey Field number was not mentioned in the schedule. The amendment sought for by the respondents is a pre-trial amendment. The amendment sought for under Order VI Rule 17 of C.P.C., before commencement of trial has to be considered liberally. When a suit is filed praying for declaration and possession, the property must be properly and correctly described in the schedule of the plaint. By present applications, the respondents are seeking amendment of the schedule alone to include Survey Field No.438/2 and no other amendment is sought for by the respondents. Only when by amendment, a party is seeking to introduce a new case, cause of action or seek to change the character and nature of the suit, the said amendment can be refused. In the present case, by this amendment, the respondents are neither introducing any new cause of action or new case, nor by amendment, the character and nature of the suit will be changed. From the orders of the learned Judge, it is seen that the objection of the petitioners is that they are the owners of the suit property in S.F.No.438/2 and that respondents have not produced any document to show that the

respondents are owners of the said properties. In the suit filed by the respondents, they are seeking relief of declaration and it is for them to prove their title by acceptable oral and documentary evidence that they are the owners of properties in S.F.No.438/2. Similarly, when the petitioners are claiming title for the very same Survey Field Number, it is for the petitioners to prove the same by letting in oral and documentary evidence. The learned Judge has considered the entire materials in proper perspective and allowed I.A.Nos.814 to 816 of 2016. There is no error or irregularity in the orders of the learned Judge warranting interference by this Court.

For the above reason, all the three Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

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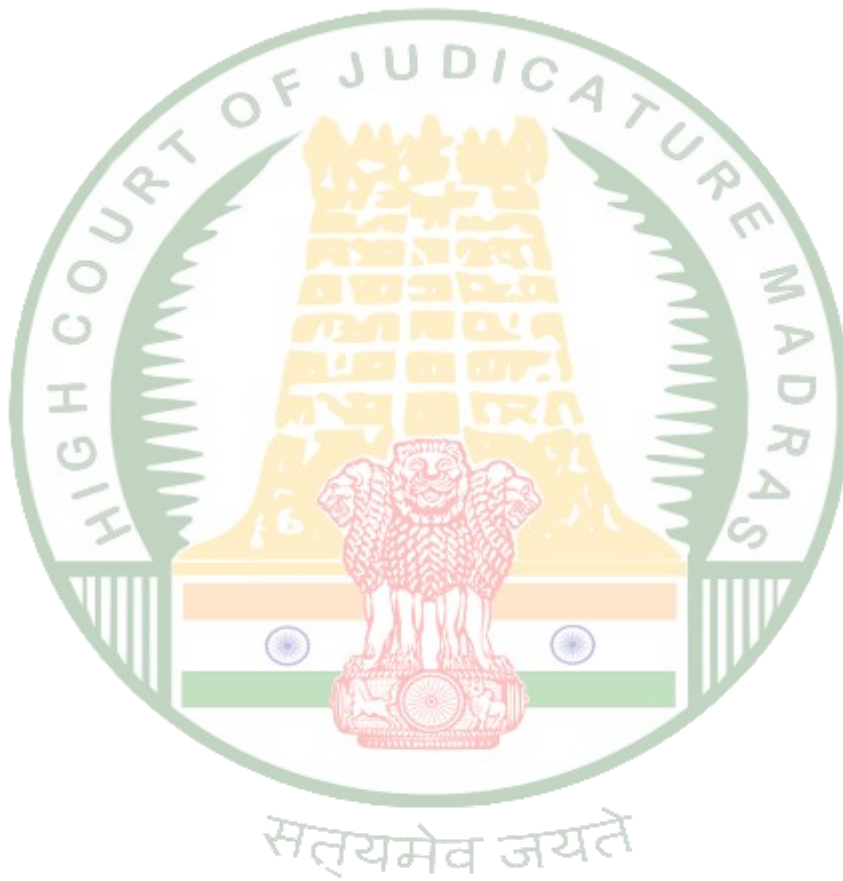
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C.R.P.(PD).Nos.3532 to 3534 of 2017

To

The District Munsif,

Sulur



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V.M.VELUMANI, J.

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