

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM

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

CRP (PD) No.3253 of 2018
and CMP.No.18497 of 2018

1.L.Murugesan
2.L.Shanmugam
3.Balasubramaniam

..Petitioners

Vs.

1.Chinna Mara Naicker
2.Ganesan
3.Bhagyalakshmi
4.Dhanalakshmi
5.Rukmani
6.M.Kalimuthu
7.Manickam

M.Rajan (Died)
8.Shyla Devi
9.S.Ranganathan
10.Baby
11.S.Chinnasamy
12.Rajeswari
13.Rathinam
14.M.Ravi
15.M.Radhakrishnan
16.Saroja
17.Malarvizhi
18.S.Gayathiri
19.R.Shobana
20.Rajammal
21.Minor R.S.Karthikeyan

Rep by his mother and guardian Shobana

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 30.08.2018 made in I.A.No.1317 of 2017 in O.S.No.337 of 2013 on the file of the IV Additional District Munsif, Coimbatore.

For Petitioners	: Mr.Ayyapparaja
For R1 to R7	: No appearance
For R8 to R12	: Mr.S.Mukund
	ofr M/s.Sarvabhauman Associates
For R13 to R21	: No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 30.08.2018 made in I.A.No.1317 of 2017 in O.S.No.337 of 2013 on the file of the IV Additional District Munsif, Coimbatore, thereby allowing the application for amendment.

2. The petitioners are the defendants and the respondents are the plaintiffs. The respondents filed a suit for declaration and permanent injunction in respect of the suit property comprised in S.F.No.5/1 ad-measuring 1.20 acres in patta No.339 situated at Madukarai Village, Coimbatore.

3. On receipt of the summons, the petitioners appeared through their counsel and filed their written statement stating that the respondents have intentionally suppressed the fact of sub-division of S.F.No.5/1 which was

divided as 5/1A, 5/1B and 5/1C. In fact, before filing the suit, the 9th respondent herein filed a petition before the Revenue Divisional Officer, Coimbatore for cancellation of patta stands in the name of the petitioners and to issue patta in their favour and the same was dismissed by an order dated 15.10.2012. In the said order, the Revenue Divisional Officer categorically stated that the land in S.F.5/1 is sub divided as S.F.No.5/1A and 5/1B. Therefore, the respondents have knowledge about the sub division and even at the time of filing the suit for declaration and describing the property as S.F.No.5/1 ad-measuring 1.20 acres. Even after filing their written statement in the year 2013, the respondents did not file any petition to amend the prayer within the period of three years from the date of filing of the suit. He further submitted that the amendment petition is not filed under bonafide reason and as such, the amendment is not automatic. Therefore, it is liable to be dismissed. In support of his contention, he relied upon a judgment reported in **2007 (6) MLJ 1703.**

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4. Per contra, the learned counsel for the respondents would submit that admittedly, the suit property is comprised in S.F.No.5/1 ad-measuring 1.20 acres. According to the respondents, the property comprised in S.F.No.5/1 is ad-measuring 4.18 acres. While dividing the property in the

partition deed among the family members ad-measuring 2.98 acres only divided and the remaining property ad-measuring 1.20 acres was un-divided and kept in common among the parties. While being so, the petitioners are being neighbours were tried to encroach the suit property. Therefore, they filed the suit in respect of the suit property comprised in S.F.No.5/1 ad-measuring 1.20 acres. Even according to the petitioners, the property comprised in S.F.No.5/1 was sub-divided into 5/1A, 5/1B and 5/1C, as such, the amendment sought for by the petitioners would not cause any prejudice to the petitioners and also would not change the nature of the suit and the cause of action.

5. Heard Mr.Ayyapparaja, learned counsel for the petitioners and S.Mukund, learned counsel appearing for the respondents 8 to 12.

6. The respondents filed a suit for declaration and injunction in respect of the suit property comprised in S.F.No.5/1 ad-measuring 1.20 acres. The respondents filed their written statement stated that the property comprised in S.F.No.5/1 was already sub-divided as 5/1A, 5/1B and 5/1C. Therefore, the respondents filed a petition to amend the suit schedule property as follows :

“The property is presently comprised in S.F.Nos.5/1A and 5/1B of Madukkari Village, Coimbatore District”.

7. The amendment sought for by the respondents is nothing but to include the sub-division viz., the suit property comprised in S.F.No.5/1 after sub-division situated in S.F.No.5/1A and 5/1B according to the plaintiff. Therefore, the amendment sought for by the respondents would not change the nature of the suit and also would not change the cause of action.

8. That apart, the title in respect of the suit schedule property will be decided only at the time of trial not in the amendment petition. Therefore, the Court below rightly allowed the petition for amendment and this Court finds no illegality or infirmity in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. However, the petitioners are permitted to file their additional written statement and the Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. It is also made clear that all the issues raised by the petitioners herein including the limitation will be considered by the Trial Court during the trial. No costs. Consequently, connected miscellaneous petition is closed.

30.04.2021

Speaking/Non-speaking order

Index : Yes/No

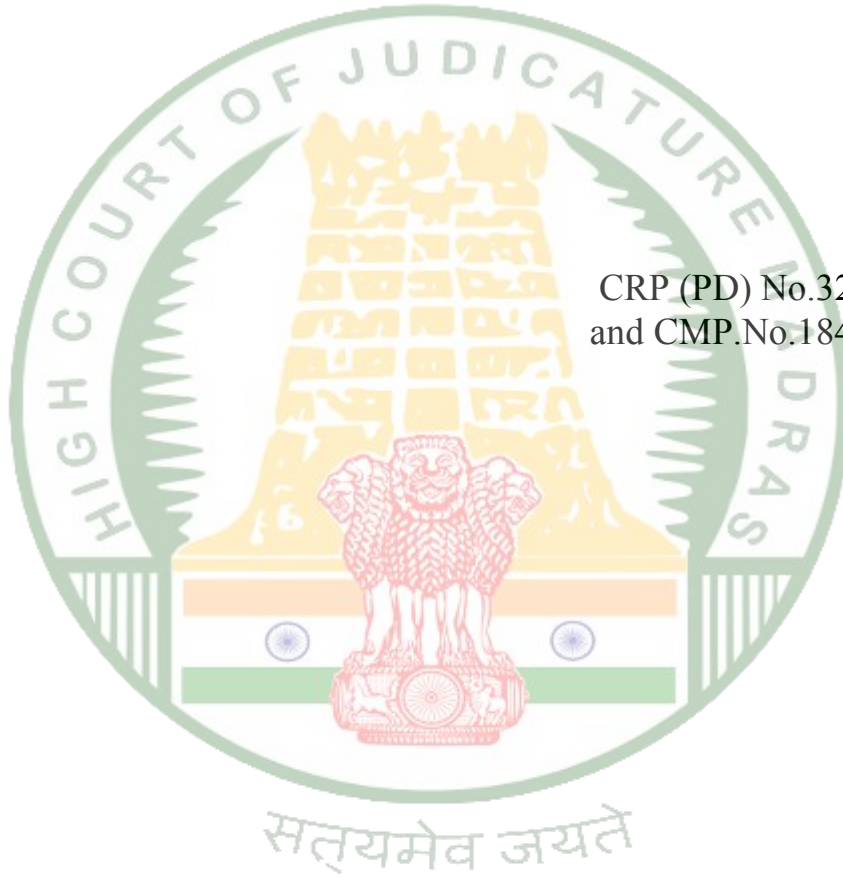
Internet : Yes/No

lpp

G.K.ILANTHIRAIYAN.J,

lpp

To
The IV Additional District Munsif,
Coimbatore



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