

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (PD).No.3332 of 2018

and

Cmp.No.18905 of 2018

Selvarasi

... Petitioner

Versus

1.Mohana

2.Vimala

3.R.Janardhanan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order of the learned Subordinate Judge at Dharmapuri, dated 29.06.2018 in I.A.No.178 of 2018 in O.S.No.161 of 2012.

For Petitioner : Mr.P.Valliappan

For Respondents : No Appearance

ORDER

This Civil Revision Petition has been filed challenging the order dated 29.06.2018 passed in I.A.No.178 of 2018 in O.S.No.161 of 2012, on the file of the learned Subordinate Judge at Dharmapuri.

2.The respondents herein are the petitioners in I.A.No.178 of 2018. The I.A was filed under Order VI Rule 17 of CPC, to amend the suit schedule property mentioned in the suit.

3.In the said I.A, it was stated that the suit schedule property's survey number was wrongly mentioned as S.No.331/1 instead of S.No.333/1. Therefore, wherever the survey numbers were mentioned wrongly it needs to be changed as S.No.333/1. The Court below, after hearing both sides allowed the amendment petition.

4.Aggrieved by the said order passed in I.A.No.178 of 2018, the revision petitioner filed this present revision petition by stating that the total extent of the land in survey number 331/1 is 47 cents. The respondent's claim was about 34 cents. It is the main contention of the revision petitioner herein that the boundaries provided in the schedule A, B, C is with regard to the extent of 47 cents of land situated in the survey number 331/1. The boundaries in the suit schedule will not be applicable for the survey number 333/1.

5.In the present case, the respondent herein has filed an

application for amendment as if it is clerical mistake for mentioning the survey number wrongly as S.No.331/1 instead of 333/1. Whereas, in the present case, the suit schedule boundaries also required to be amended, if at all if the survey number 333/1, is incorporated in the schedule property. All the aspects have not been considered by the Court below. Therefore, he submitted that the order passed by the court below needs to be set aside and he pleaded to remand back the matter for re-adjudication.

6.Though notice was ordered to the respondents, none appeared for the respondents even after service and the name also printed in the cause list.

7.Heard the learned counsel for the petitioner and perused the materials available on record.

8.On a perusal of the order passed by the Court below, it is apparent that the Court below has passed the order under the impression that there is a clerical mistake in mentioning the survey number S.No.331/1 instead of 333/1, whereas the case of the revision petitioner is that it is not only the survey number in the plaint has been mentioned wrongly due to

clerical mistake but the boundaries mentioned in the application for amendment in the plaint are in respect of only the survey number 331/1, in which case, an amendment should also have been sought and would have considered by the Court below but only change of survey number alone sought and allowed. Now, it appears as contended by the petitioner, the boundaries mentioned in the schedule is relating to the survey number 331/1, in which case, the necessary amendment requires to be made in the boundaries as well. These aspects have not been considered by the Court below. If these aspects were considered by the Court below, it would have passed appropriate orders to direct the respondents to file an appropriate amendment petition to amend the boundaries as well.

9. Under these circumstances, obviously, if wrong boundaries are provided as contended by the petitioner/appellant the interest of both parties will get affected. Therefore, this Court is of the view that the order passed by the Court below issues to be set aside. Accordingly, it is set aside with the direction to the Court below to re-adjudicate the I.A.No.178 of 2018 in O.S.No.161 of 2012, within a period of two months, from the date of receipt of a copy of this order.

10.With this observation and direction, the Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

24.02.2021

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order

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To

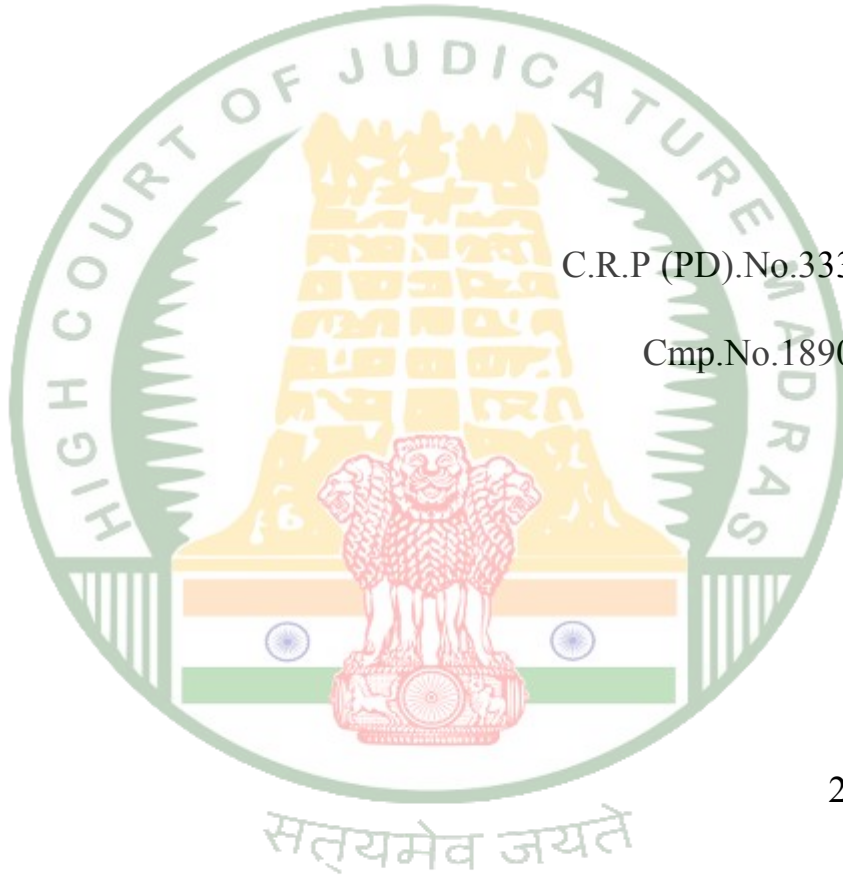
The learned Subordinate Judge at Dharmapuri.



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KRISHNAN RAMASAMY, J.

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