

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

**C.R.P.(PD) No. 3461 of 2018
and CMP No.19404 of 2018**

1.G.Sasikala
2.G.Shoba

... Petitioners

Vs

1.R.Ethirajan
2.E.Chandrammal

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 24.08.2018 made in I.A.No.12025 of 2016 in O.S.No.5094 of 2013 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.L.Dhamodharan
For Respondents : Mr.S.Veeraraghavan

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 24.08.2018 made in I.A.No.12025 of 2016 in O.S.No.5094 of 2013 on the file of the XVI Assistant Judge, City Civil Court, Chennai, thereby partly dismissing the petition for seeking amendment.

2. The petitioners are the plaintiffs and the respondents are the

defendants. The petitioners filed a suit for bare injunction in respect of the suit property. The respondents filed their written statement stating that there is no property comprised in Survey No.339/1 and the petitioners are trying to grab the property in Survey No.339/1B belonged to them. Therefore, the petitioners filed a petition for seeking amendment for the survey number and also for other pleadings to be amended in the plaint.

3. On perusal of the affidavit filed in support of the petition seeking for amendment revealed that originally the property ad-measuring 94 cents comprised in Survey No.339/1 situated at Ram Nagar, 6th main Road, Velacherry, Mambalam-Guindy Taluk, belonged to one Srinivasaraghavan. The first petitioner herein has purchased the suit property from the said Srinivasaraghavan by a registered sale deed dated 30.10.2008, vide Document No.4420 of 2008. While pending the suit, the first plaintiff settled the said property in favour of the second plaintiff by a settlement deed dated 27.11.2014, vide Document No.8079 of 2014. Thus, the second plaintiff became an absolute owner and filed a petition for seeking amendment to add the above said facts in the cause of action and as per the settlement deed, the survey number mentioned as 339/1B.

4. On perusal of the counter filed by the respondents revealed that the execution of the settlement deed by the first plaintiff in favour of the second plaintiff clearly shows that there are ulterior motive to encumber the suit property and to create a third party interest in the suit property. The said Srinivasaraghavan has sold the entire land comprised in Survey No.339/1B to others and as such, the first plaintiff had no title over the property. While being so, only to encumber the suit property, the first plaintiff executed the settlement deed in favour of the second plaintiff in respect of the property comprised in Survey No.339/1B. The Court below allowed the amendment sought for in the cause of action and denied the amendment in respect of the survey number.

5. When the Court below allowed the amendment as per the settlement deed executed by the first defendant in favour of the second defendant, the Court below ought to have allowed the amendment insofar as the survey number also. That apart, the petitioners filed only suit for bare injunction in respect of the suit property. The amendment sought to substitute the survey number of the suit property does not alter the nature and character of the suit. In order to resolve the dispute between parties after giving them sufficient opportunity amendment can be permitted to

avoid multiplicity of proceedings.

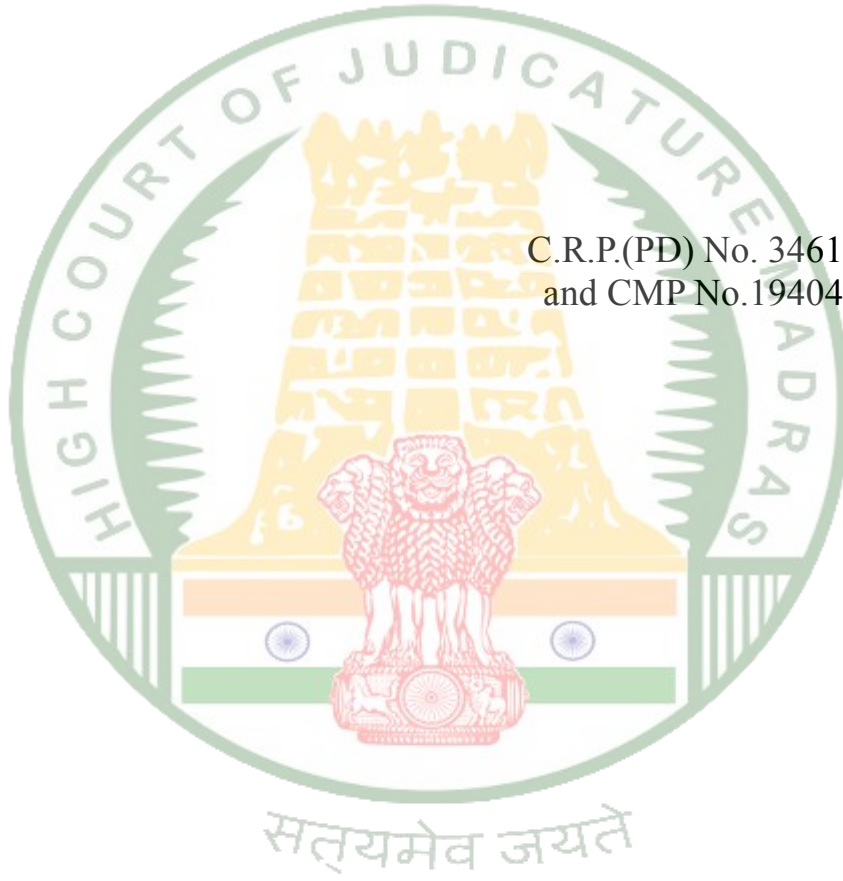
6. Considering the above, the order passed by the Court below is liable to be set aside and accordingly the order passed by the XVI Assistant Judge, City Civil Court, Chennai in I.A.No.12025 of 2016 in O.S.No.5094 of 2013, dated 24.08.2018 is set aside. This Civil Revision Petition is allowed. However, the respondents are permitted to file their additional written statement and on receipt of the same, 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. No costs. Consequently, connected Miscellaneous Petition is closed.

23.06.2021

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

To
The XVI Assistant Judge,
City Civil Court, Chennai.

G.K.ILANTHIRAIYAN.J,



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