



C.R.P(MD)No.1030 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.03.2023
DELIVERED ON : 01.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1030 of 2015
and
M.P(MD)No.1 of 2015

1.The Church of God,
Represented by its President
George Tharakan,
ECCIECIA,
Palarivattam,
Kochin, Kerala State.

2.Eliazer
3.Ebanesar
4.Manonmoni

... Petitioners

Vs.

K.Sadhasivan

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.01.2015 in I.A.No.314 of 2012 in A.S.No.85 of 2012 on the file of the Subordinate Judge's Court, Kuzhithurai Camp (Learned II Additional Subordinate Judge of Nagercoil).



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For Petitioners : Mr.K.N.Thambi

For Respondent : Mr.P.Thiagarajan

ORDER

This Civil Revision Petition has been filed assailing the order passed by the learned Sub Court, Kuzhithurai Camp (learned II Additional Subordinate Judge, Nagercoil) in I.A.No.314 of 2012 in A.S.No.85 of 2012 dated 23.01.2015. The original suit in O.S.No.406 of 2004 on the file of the District Munsif Court, Kuzhithurai was one for declaration of title and possession of the plaint schedule properties scheduled as 'A' and 'B' schedule properties in favour of the plaintiff and a consequential injunction. The suit was dismissed on merits on 15.09.2012. As against which, A.S.No. 85 of 2012 was preferred by the plaintiffs before the Subordinate Court, Kuzhithurai Camp.

2. During the pendency of the appeal suit, the appellants / plaintiffs preferred a petition in I.A.No.314 of 2012 seeking to amend the re-survey number in plaint 'A' schedule item No.2 and plaint 'B' schedule properties as Re-survey No.270/1 instead of Re-survey No.270/2. The respondents / respondents / defendants have filed a counter to that interlocutory

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application and on merits, the said interlocutory application was allowed on 23.01.2015 in the first appellate stage. Assailing the same, the present Civil Revision Petition is filed by the revision petitioners / respondents / respondents / defendants.

3. Heard the learned Counsels for the revision petitioners and the respondent anxiously and perused the materials available on record carefully. The learned Counsel for the revision petitioners took me through the various grounds of the Civil Revision Petition and the contents of the documents.

4. The learned Counsel for the revision petitioners submitted that the amendment which is sought for in the first appellate stage ought to have dismissed by the first appellate Court at the first instance itself. In support of this case, he relied on the following decisions:

(i) The relevant portion of the judgment of the Hon'ble Supreme Court of India reported in **(AIR 2005 SC 3353) Salem Advocate Bar Association, Tamil Nadu Vs. Union of India** dated **02.08.2005** is extracted as follows:

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“26. Order VI Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”

(ii) The relevant portion of the judgment of this Court reported in **(2005 (2) CTC 432) Ramesh Ramanujam and Others Vs. Varadammal and Others** dated **31.03.2005** is extracted as follows:

“9. However, after the amendment of the said provision on and from 1 .7.2002 as per Amendment Act Central Act 46 of



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1999, the legislature thought it fit to introduce a proviso to Rule 17. The said proviso contemplates two stages viz., application which can be filed prior to the commencement of the trial and after the commencement of the trial. Since the amendment itself restricts about pre-trial and post-trial stages, the intention of the legislature is very clear that no application seeking amendment of the pleadings is permissible after the completion of the trial. The said amendment seems to have been made with a view to prevent parties to the proceedings to approach the Courts seeking necessary amendment of the pleadings at the earliest stage, so as to avoid frivolous petitions being filed at any stage of the proceedings. That is the reason as to why the above provision is amended in such a manner that a party should not be permitted to file an application for amendment after the commencement of the trial, except in the circumstances, he is able to satisfy the Court to the effect that in spite of due diligence, he could not have raised the matter before the commencement of trial.

12. In the light of the various decisions rendered by the Apex Court and this Court, while interpreting Order 6 Rule 17 prior to amendment, it is clear that though liberal approach can be made in permitting the amendment prior to the commencement of the trial, after the commencement of the trial, the party seeking amendment of the pleadings is expected to adduce necessary materials as to why he was not able to make



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necessary pleadings at the prior point of time. No decision of this Court as well as the Apex Court is placed before me to the effect that amendments can be permitted even after the disposal of the suit, subsequent to the amendment of CPC with effect from 1.7.2002.”

(iii) The relevant portion of the judgment of this Court reported in **(2006 (1) CTC 55) S.Ahamed Meeran and Others Vs. S.Kumaraswamy** dated **22.08.2004** is extracted as follows:

*“19. Order 6, Rule 17, C.P.C. has been amended by the C.P.C. Amendment Act with effect from 1.7.2002. A new proviso has been added to the rule, namely that no application for amendment of the pleadings shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of Trial. In **Kasiappa Gounder, S/o. Manthiriappa Gounder, Periya Thadagam, Verapandi, Coimbatore Taluk, 2005(3)CTC412** and **P. Subba Naicker v. Veluchamy Naicker and three Ors. 2004(1)CTC 742**, this Court has held that after the Trial of the case, no Application for Amendment of the Pleadings shall be allowed.....”*



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(iv) The relevant portion of the judgment of this Court reported in **(2006 (3) CTC 27) D.Ramanujam Vs. R.Panneerselvam** dated **24.03.2006**

is extracted as follows:

“5.From a reading of the above proviso, it is clear that once the trial has been commenced, no application for amendment of the pleadings can be allowed unless the Court comes to a conclusion that inspite of the diligence, the party could not have raised the matter before the commencement of the trial.....When the trial has already commenced, the present amendment petition was filed without giving any valid reason for not filing the amendment before the commencement of the trial. Even after the trial, the Court could not allow the amendment petition unless the Court is satisfied that inspite of the due diligence, the party could not have raised the matter.....”

(v) The relevant portion of the judgment of the Hon'ble Supreme Court of India reported in **((2009) 2 SCC 409) Vidyabai and Others Vs. Padmalatha and Another** dated **12.12.2008** is extracted as follows:

“10. By reason of the civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under:

“Provided that no application for amendment shall be



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allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefore are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

(vi) The relevant portion of the judgment of this Court reported in **(MANU/TN/2713/2016) N.Jothi Vs. S.Radha and Others** dated **02.11.2016** is extracted as follows:



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“13. The learned counsel for the respondents also contended that under Article 58 of the Limitation Act, the relief sought for by the petitioner-plaintiff is barred. Though the original suit was filed in the year 2004, the present application seeking for amendment of the prayer for declaration and recovery of possession cannot be granted after a lapse of 10 years. The amendment of the pleadings cannot be allowed only to get over the findings of the Trial Court.

15. It is settled position that post-trial amendment cannot be granted just for asking. In the case on hand, it is not only post-trial amendment, but also amendment is sought for by the petitioner-plaintiff after the dismissal of the suit. The Lower Appellate Court, taking into consideration the case of both the parties, rightly dismissed the application.”

(vii) The relevant portion of the judgment of the Hon'ble Supreme Court of India reported in **((2019) 2 CTC 474) M.Revanna Vs. Anjanamma (dead) by legal heirs and Others** dated **14.02.2019** is extracted as follows:

“5.Proviso to Order VI Rule 17 of CPC virtually prevents an application for amendment of pleadings from being allowed after the trial had commenced, unless the Court comes to the conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow



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amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There can not be any dispute that, an amendment can not be claimed as a matter of right, and under all circumstances.....”

5. Per contra, the learned Counsel for the respondent submitted that it is very much essential to correct the clerical mistakes in the pleadings so as to see the dispute between the parties are resolved. In the present case with respect to the properties having an extent of 15.125 cents shown as 'A' schedule item Nos.1 and 2 in Re-survey Nos.270/1 and 270/2 respectively, there is no dispute with respect to its title and possession. However, the core dispute is with respect to the 5 cents of land shown as 'B' schedule property.

6. According to the revision petitioners' case, the property having an extent of 2.5 ares in Re-survey No.270/2 belongs to the 'Church of God', whereas the respondent's case is that the 'B' schedule property lies contiguously in 'A' schedule item No.1 and he is in possession of the same and was entitled to declare his title and possession.

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7. The mentioning of re-survey number is only to identify the property through revenue records. The claim over the property at Re-survey No. 270/2 by the revision petitioners are not disputed by the amendment petition filed by the respondent and restricted his claim in the suit only with respect to the Re-survey No.270/1. By means of the said amendment, the clerical mistake committed while drafting the plaint should not be allowed to spoil the entire case of the respondent and for the same, the learned Counsel for the respondent relied on the following judgments:

(i) The relevant portion of the judgment of the Hon'ble Supreme Court of India reported in ***((2012) 5 CTC 803) Abdul Rehman and Others Vs. Mohammed Ruldu and Others*** dated **27.09.2012** is extracted as follows:

“8.This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice.....”

(ii) The relevant portion of the judgment of this Court reported in ***((2015) 4 LW 62) B.Dheenadhayabaran Vs. Rathna Vel*** dated **24.07.2015** is extracted as follows:



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“9. 8.Under Section 153, the court has extensive powers to correct mistakes in applications or complaints and it was held that where in a suit on a mortgage the name of the village in which the mortgaged property was situated was miss described and the mistake is discovered on appeal it is the duty of the appellate court to allow an amendment of the complaint and thus rectify a clerical mistake.”

(iii) The relevant portion of the judgment of Hon'ble High Court of Karnataka reported in **((2020) 2 KarLJ 427) Siddalingawwa and Others Vs. Siddappa and Others** dated **05.07.2019** is extracted as follows:

“7. In view of the above said ruling of the Apex Court and also the principle that the rules or procedure are only intended to be handy to the administration of justice, in fact, the amendment cannot be refused just merely because of some mistake, negligence, inadvertence or any infraction of the rules or procedure. The Court should always heed to the amendment of the pleadings of the parties to administer substantial justice.....”

8. However, a perusal of the records would throw more light on the facts and circumstances of this case. The respondent herein has filed I.A.No. 314 of 2012 to get over the laches and lacunas of his case after the



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pronouncement of the judgment and decree by the Trial Court in the first appellate stage. The respondent herein is the plaintiff in the original suit and the suit was one to declare the title and possession of the plaint schedule properties by the plaintiff which are scheduled as item Nos.1 and 2 in 'A' schedule property and 'B' schedule property. Item No.1 consists an area of 12.125 cents land comprised in Re-survey No.270/1, item No.2 of the 'A' schedule property consists an area of 3.625 cents land comprised in Re-survey No.270/2 and the 'B' schedule property consists an area of 5 cents land comprised in Re-survey No.270/2 of Arumanai Village as per the schedule of property in the plaint. In furtherance to the same, it is mentioned in the description of the plaint schedule properties column as follows:

“(i) Item No.1 is the southernmost 12.125 cents land in Munnazhimoola Purayidom consisting a total area of 1 acre and 5 cents land comprised in Re-survey No.270/1 of Arumanai Village.

(ii) Item No.2 of plaint schedule property lies in the central portion of the said Munnazhimoola Purayidom consisting an area of 3.625 cents land in the total 1 acre and 5 cents land comprised in Re-survey No.270/2 of Arumanai Village.

(iii) In plaint 'B' schedule property, the description which shows that



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it consists about 5 cents land which lies contiguously forming part of plaint 'A' schedule property item No.1, but it is comprised in Re-survey No.270/2 of Arumanai Village.”

9. Now, by way of I.A.No.314 of 2012, the amendment sought for is to amend the re-survey number of the plaint 'A' schedule item No.2 and plaint 'B' schedule properties as Re-survey No.270/1 instead of Re-survey No.270/2 of Arumanai Village. The respondent herein has stated in his plaint that the plaint 'A' schedule property originally belonged to Kunju Cherukkan and his wife Sarasamma, the parents of the plaintiff and they obtained patta in patta No.1549, wherein they were continuously in occupation of the same. Further it is stated in the plaint that the plaint 'B' schedule property forms part of the plaint 'A' schedule property. Later, the parents of the plaintiff gifted 15.125 cents land described as plaint 'A' schedule items 1 and 2 to the plaintiff. Though the plaintiff got 15.125 cents land under the gift deed, it lies in two separate plots as scheduled in the plaint 'A' schedule property. Having pleaded that the plaint 'A' schedule property comprising an area of 15.125 cents land lies in two separate plots as item Nos.1 and 2 as scheduled in plaint 'A' schedule property and the



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plaint 'B' schedule property forms part of it. Immediately in the later part of paragraph No.2 of the plaint, he makes a somersault as to the description of the plaint 'B' schedule property stating that the plaint 'B' schedule property measuring about 5 cents lies contiguously with the plaint 'A' schedule property item No.1 as a single compact plot encircled with iron barbed wire fence on three sides except on the west drawn through rubble pillars.

10. It is quite ridiculous to understand how plaint 'B' schedule property which forms a part of plaint 'A' schedule property would lie contiguously with the plaint 'A' schedule property. In furtherance to the same, when the plaint 'A' schedule item No.1 is shown as 12.125 cents land comprised in Re-survey No.270/1 of Arumanai Village and plaint 'A' schedule item No.2 property is shown as 3.625 cents land comprised in Re-survey No.270/2 of Arumanai Village, the plaintiff has scheduled plaint 'B' schedule property as 5 cents land comprised in Re-survey No.270/2 which lie contiguously forming part of plaint 'A' schedule item No.1 comprised in Re-survey No.270/1 of Arumanai Village. Hence, the plaintiff himself is not clear as to the description of plaint 'A' schedule properties and 'B' schedule property. It is not properly explained by the respondent as to how plaint 'B'



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schedule property which is claimed to lie contiguously to plaint 'A' schedule item No.1 comprised in Re-survey No.270/1 of Arumanai Village would also form part of plaint 'A' schedule item No.1. This has been specifically dealt with by the revision petitioners in the written statement filed by the revision petitioners in the original suit. In paragraph No.4 of the written statement it is specifically mentioned that description of plaint 'B' schedule property is not correct and the plaintiff has absolutely no right or possession whatsoever in the plaint 'B' schedule property and hence, he is not entitled to get any relief in respect of the plaint 'B' schedule property.

11. The title of the plaintiff over the plaint 'B' schedule property was also disputed and it has been promptly pleaded by the revision petitioners in their written statement that an area of 2.5 ares land comprised in Re-survey No.270/2 formerly belonged to a Mission called 'Bible Faith Mission', which was later merged with 'Church of God' in 1958. As a consequence of which, in the year 1959, written documents in respect of the properties of 'Bible Faith Mission' were executed in favour of 'Church of God' and plaint 'B' schedule property is one among those properties. The another specific pleading of the revision petitioner in their written statement is that the



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impugned gift deed on the strength of which, the plaintiff claims title over the plaint 'B' schedule property do not include plaint 'B' schedule property in its description of property. On merits, the suit was dismissed by the learned Trial Court.

12. The respondent, who is the plaintiff in para 1 of the plaint has stated that the plaint 'B' schedule property forms part of plaint 'A' schedule property. In paragraph No.2 of his plaint, he has pleaded that plaint 'A' schedule item Nos.1 and 2 lies as two separate plots, but plaint 'B' schedule property is contiguous to plaint 'A' schedule properties. However, the description of property of the plaint 'B' schedule property in the schedule of properties describes plaint 'B' schedule property as a land property of about 5 cents of land lying contiguously forming part of plaint 'A' schedule item No.1. The boundaries of the schedule of property of plaint item No.1 of the plaint 'A' schedule property and 'B' schedule property are one and the same. If plaint 'B' schedule property lie contiguous to plaint 'A' schedule item No. 1, the description of boundaries cannot be the same. Even if plaint 'B' schedule property forms part of item No.1 of plaint 'A' schedule property, the description of the boundaries cannot be the same.



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13. Under such circumstances in the first appellate stage, it cannot be construed that I.A.No.314 of 2012 is filed with a *bona fide* intention. Seeking amendment of survey number of plaint schedule properties in the first appellate stage will not aid the learned first Appellate Court in deciding the real facts in dispute. Even with respect to the contention of the respondent that the description of survey numbers in item No.2 of the plaint 'A' schedule property and plaint 'B' schedule property is a typographical error, no valid reason or explanation has been pleaded in the averments in I.A.No.314 of 2012 with respect to the amendment sought or with respect to the indiscrepancies in the boundaries of the plaint schedule properties.

14. Moreover, it is a settled provision of law that an amendment of plaint shall not be allowed after the trial has commenced unless and until the parties seeking amendment has proved that in spite of due diligence, the said amendment could not be raised before the commencement of the trial. Moreover, amendment of the re-survey number of the plaint schedule properties as sought for in I.A.No.314 of 2012 even if allowed will not help the case of the plaintiff until and unless the boundaries of the various items



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of the plaint schedule properties are properly stated. The failure on the part of the respondent to state proper reasons for seeking such an amendment in a belated first appellate stage also defeats his claim for amendment of plaint. In a similar case, this Court in ***N.Gangammal Vs. Gattu Mahesh and Others*** reported in ***[MANU/TN/1048/2017]*** dated **28.03.2017** in paragraph Nos.9, 10 and 11 has held as follows:

“9. It is pertinent to note that the plaintiff filed the suit in O.S. No. 260 of 2009 in the year 2009, the written statement was filed in the year 2010 and the additional written statement was filed in the year 2014. Prior to the commencement of the trial, the Advocate Commissioner visited the suit property and filed his report. Earlier, the plaintiff filed an application seeking amendment of the plaint in respect of the suit survey number. Originally, the suit was filed in respect of Survey No. 113/1A2. Thereafter, by way of amendment, the survey number was amended as 113/2. Even at that time of amendment, the plaintiff has not sought for amendment of the extent.

10. Now, after the cross examination of P.W.1, the present application has been filed seeking for amendment of the schedule of the property.



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11. The Trial Court, while dismissing the application, extracted the admissions made by P.W.1 with regard to the suit property. If the present application is allowed, it would give an opportunity to the plaintiff to get over the admissions made by P.W.1 in the cross examination. That apart, the plaintiff cannot be allowed to set up a totally new case contrary to the averments stated in the plaint.....”

15. Even in this case, the respondent has filed I.A.No.314 of 2012 seeking amendment of the survey number of item No.2 of plaint 'A' schedule property and the 'B' schedule property in the first appellate stage to get over the findings made by the learned Trial Court in its judgment and allowing the said amendment application would facilitate the respondent / respondent / appellant / plaintiff to set up a totally new case. Moreover, the description of property and the boundaries with respect to item Nos.1 and 2 of plaint 'A' schedule property and plaint 'B' schedule property are also confusing and mis-leading.

16. The learned Counsel for the respondent in this revision petition in his written submission has sought the permission of this Court to withdraw

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the original suit, in case, this Court decides to allow this Civil Revision Petition. Any suit can be withdrawn with a liberty to file a fresh suit even in the appellate stage. In the case of ***C.Vaiyapuri Gounder and Others Vs. The Commissioner, HR&CE (Administration Department), Chennai and Others*** reported in ***[MANU/TN/2400/2004]*** dated ***18.11.2004***, this Court has held that even at the appellate stage, suit can be permitted to be withdrawn with a liberty to file a fresh suit on the same cause of action. In the case of ***N.Veerappan Vs. M.Kandasamy and Others*** reported in ***2006 (4) MLJ 119***, this Court has held that under Order XXIII, Rule 1(3) of the Code of Civil Procedure, 1908, permission to withdraw a suit and to file a fresh suit on the same cause of action can be granted by the Court if the suit must fail by a reason of 'formal defect' or if 'sufficient grounds' are made out. The word 'sufficient grounds' would cover a wider field and not restricted to 'formal defect' or similar defect. The question of proper valuation of the suit properties entailing the change of jurisdiction would be a 'sufficient grounds'. In another case reported in ***2000 (2) MLJ 76 in the case of Arcot Textiles Mill Limited Ulagamkathan Village, Kallakurichi Taluk by Managing Director Nadrajh Annamalai Vs. S.Rajendran and Others***, this Court has held that the plaintiffs have got the right to withdraw



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the suit at any stage of the proceedings unless the defendant show that he has vested right.

17. In view of the above decisions, this Court is of the considered view that though this Civil Revision Petition is liable to be allowed, however, the respondent can be given with a liberty to withdraw the original suit in O.S.No.406 of 2004 on the file of the District Munsif Court, Kuzhithurai to file a fresh suit for the same cause of action effecting necessary corrections in the schedule of property in the plaint. In fine, this Civil Revision Petition stands allowed. However, the respondent is given with a liberty to withdraw the original suit in O.S.No.406 of 2004 on the file of the District Munsif Court, Kuzhithurai to file a fresh suit for the same cause of action. The learned Subordinate Court, Kuzhithurai Camp (learned II Additional Subordinate Judge, Nagercoil) ought not to have allowed the I.A in I.A.No.314 of 2012 in A.S.No.85 of 2012 by its order dated 23.01.2015. Hence, this Court is inclined to set aside the order passed by the learned Subordinate Court, Kuzhithurai Camp (learned II Additional Subordinate Judge, Nagercoil) in I.A.No.314 of 2012 in A.S.No.85 of 2012.



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18. In the result, this Civil Revision petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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NCC : Yes
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Internet : Yes
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To

- 1.The Subordinate Judge's Court, Kuzhithurai Camp.
(Learned II Additional Subordinate Judge of Nagercoil)
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

BTR

Order made in
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