

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.12.2008

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

CRP.NPD.NO.1677 of 2006
and
M.P.NOS.1/2006 AND 1 OF 2008

M.Shanmugasundaram

....Petitioner

Vs.

1.K.Lakshmi
2.M.Gunasekaran
3.M.Rajendran
4.Swarnaveni
5.Parimalam
6.Ganesan

...Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil procedure against the fair and decretal order of the learned First Additional District Munsif, Coimbatore dated 14.7.2005 in IA.NO.2671 OF 2003 in O.S.NO.369 OF 1998.

For Petitioner : Mr.T.M.Hariharan
For Respondents: Mr.A.M.Mohan

O R D E R

This Civil Revision petition arises out of an order by which an application for amendment of the preliminary decree was dismissed by the trial Court.

2. Heard Mr.T.M.Hariharan, learned counsel for the petitioner and Mr.A.M.Mohan, learned counsel for the respondents.

3. The petitioner filed O.S.NO.369 of 1998 on the file of the Principal Sub Court, Coimbatore for partition and separate possession. The first respondent who is the mother of the petitioner, respondents 2 and 3 who are brothers of the petitioner and respondents 4 and 5 who are sisters of the petitioner, submitted to the decree. Therefore, a preliminary decree was passed in the suit declaring the right of the petitioner to 1/4th share in two items of properties described in the plaint schedule.

4. In the final decree application, I.A.No.1364/2001 the respondents took out an application for appointment of Commissioner. The Commissioner was appointed and he submitted a report. In the meantime, the petitioner filed an application for amendment of the preliminary decree in I.A.No.2657 of 2003. The only amendment sought for by the petitioner was to include the measurement and boundaries of suit item No.1 of the property. But the Court below dismissed the application for amendment on the ground that it will change the character of the suit. It is against this order that the petitioner is before this Court.

5. As stated earlier, the only amendment sought for by the petitioner is to include the measurement of all four sides and the boundaries relating to item No.1 of the suit schedule properties. Item No.1 of the suit schedule property was originally described in the plaint only with two door numbers viz. 166 and 166A with the name of the street and the locality and the electricity service connection and water service connection. No measurements and no boundaries were given. Therefore, under normal circumstances, the application for amendment deserves to be allowed.

6. However, it is stated in this case that one portion of the larger extent of item No.1 of the property was earmarked and sold in 1984 and that by way of amendment, the petitioner sought to include the portions sold also within item No.1 of suit schedule. Unfortunately, the respondents have not made such an objection very clear from the counter filed by them. In such circumstances, the petitioner also feigns ignorance of such a sale.

7. From the rival contentions, regarding the sale of a portion of item No.1 of the suit schedule properties, it is clear that there is a dispute with regard to the actual extent and boundaries of Door Nos.166 and 166A in Raju Naidu Street, Tatabad, Coimbatore. But, since it is not borne out by the pleadings of the parties, I am of the considered view that this application for amendment should be remanded back to the trial Court for a fresh disposal. There cannot be an objection to the simple inclusion of the actual measurements and boundaries of Door Nos.166 and 166A of Raju Naidu Street which is already described in Item No.1 of plaint schedule. But, under the guise of seeking such an amendment, some other property sold long before the suit, cannot also be included within item No.1, just by including larger measurements and boundaries. Since the facts relating to sale or division of the properties are not borne out either by pleadings or by records, the Civil Revision Petition is allowed, the order of Court below dated 14.7.2005 in I.A.No.2671 of 2003 is set aside. I.A.No. 2671 of 2003 is remanded back to the Court below for a fresh disposal. It is open to the parties to file additional pleadings giving clear particulars and the Court below is directed to take such additional

pleadings into account and pass fresh orders on the application and dispose of it within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected M.Ps. are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

VJY

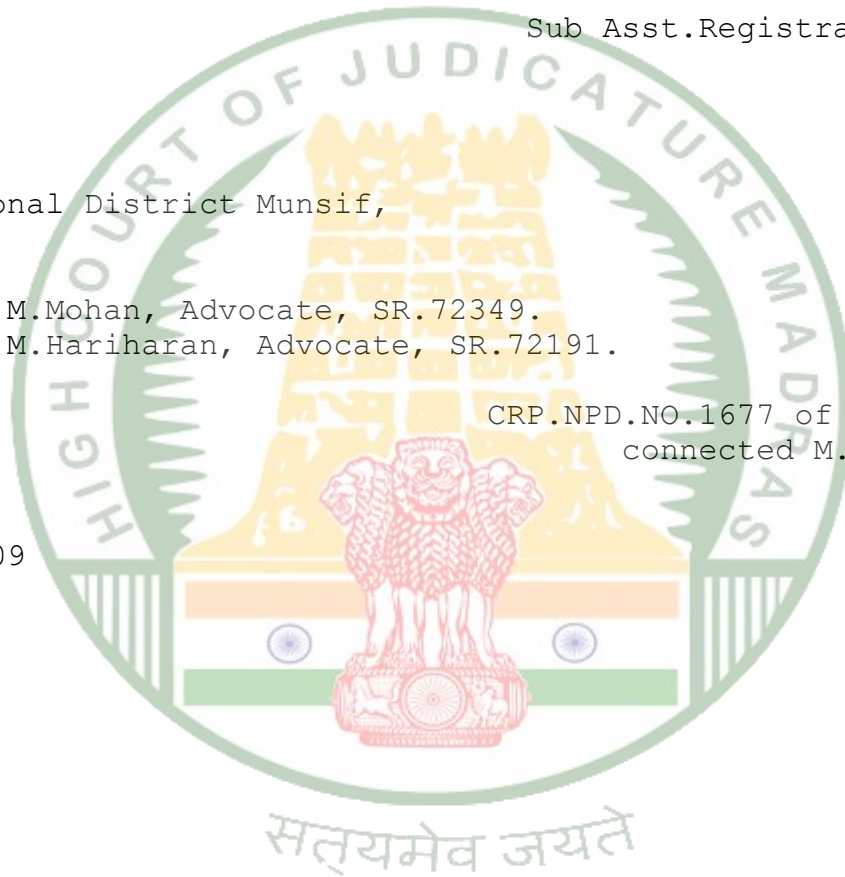
To

First Additional District Munsif,
Coimbatore.

1 cc To Mr.A.M.Mohan, Advocate, SR.72349.
1 cc To Mr.T.M.Hariharan, Advocate, SR.72191.

CRP.NPD.NO.1677 of 2006 and
connected M.ps.

RJ(CO)
RVL 12.01.2009



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