

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.09.2008

Coram

The Honourable Mr. Justice S.RAJESWARAN

C.R.P. (PD) No.3288 of 2008
in
M.P.No.1 of 2008

N.Nanjappan

... Petitioner

Vs.

1. Indian Communist Party,
Pennagaram Taluk Committee,
rep. by its Secretary M.Arumugham,
Pennagaram,
Dharmapuri District.

2. S.Devaraj

... Respondent

This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order dated 30.06.2008 made in I.A.No.82 of 2005 in O.S.No.7 of 1999 on the file of the District Munsif-Cum-Judicial Magistrate, Pennagaram.

For Petitioner : Mr.P.Mathivanan

This Civil Revision Petition has been filed by the petitioner/defendant to set aside the order dated 30.06.2008 made in I.A.No.82 of 2005 in O.S.No.7 of 1999 on the file of the District Munsif-Cum-Judicial Magistrate, Pennagaram.

2. The first defendant in O.S.No.7 of 1999 is the revision petitioner before this Court. The suit in O.S.No.7 of 1999 has been filed by the plaintiff/first respondent herein for declaration, recovery of possession and for permanent injunction restraining the defendants from in any way demolish the super structure and putting up new construction. Written statement has been filed by the first defendant/petitioner herein and the suit is being contested. Pending suit, an application in I.A.No.82 of 2005 was filed by the first respondent/plaintiff for amendment. The said application was resisted by the first defendant/petitioner herein by filing a counter. The trial Court by order dated 30.06.2008 allowed the application. Aggrieved by the same, the above civil revision petition has been filed by the first defendant in the suit.

3. I have heard the learned counsel appearing for the petitioner and I have also gone through the documents filed in support of his submissions.

4. The learned counsel appearing for the petitioner submits that by allowing the amendment, the trial Court has committed grave error as amendment sought would change the very nature and character of the suit. Moreover, according to him, the proposed amendment would amount to substituting a new party attracting the plea of bar of limitation of the suit. Hence, the trial Court ought not to have entertained the application for amendment. Therefore, the order passed by the trial Court is wrong warranting interference by this Court under Article 227 of the Constitution of India.

5. I am unable to accept the submissions made by the learned counsel appearing for the petitioner. In the suit filed by the first respondent/plaintiff for declaration, recovery of possession and for permanent injunction restraining the defendants from in any way demolishing the super structure, an application was filed by the first respondent/plaintiff for bringing certain amendments. The amendment sought for is to delete the words Pennagaram Vattara Committee represented by its Secretary M.Arumugam and to replace the same with the words Dharmapuri District Committees' Secretary. Subsequently, the plaintiff wanted to delete the sentence "Pennagaram Vattara Committee represented by its Secretary Munusamy Gounder's son M.Arumugam aged about 37 years and to replace the same with Dharmapuri District Committee's Secretary, Dharmapuri. The another amendment sought for is for removing the word Pennagaram Vattara Committee in para 3 of the plaint and to replace the same with Indian Communist Party. It is also sought to amend the words "Plaintiff Pennagaram Vattara Committee" wherever it is found in the plaint and to replace the same with plaintiff's Pennagaram Vattara Committee. The last amendment sought for is to remove the words in para 14 and to replace the same with the new words.

6. This amendment was opposed by the petitioner/first defendant holding that the amendment would change the cause of action. The trial Court in due consideration of the fact and circumstances of the case allowed the application holding that the amendment sought for would not be in a new cause of action nor change the relief sought for. Moreover, the trial Court has found that the issue involved in the suit in respect of the suit property relates to the Indian Communist Party.

7. In my opinion, bringing the District Committee in the place of Taluk Committee to prosecute the suit filed by them for declaration would not in any way cause prejudice to the plaintiff and also would not bring in any change in the cause of action. Therefore, the order passed by the trial Court does not suffer from

any infirmity warranting interference by this Court under Article 227 of the Constitution of India.

8. In the result, the civil revision petition is dismissed. No costs. Consequently, connected M.P.No.1 of 2008 is also dismissed.

rrg

Sd/-
Assistant Registrar

/ True Copy /

To

The District Munsif Cum Judicial Magistrate Court,
Pennagaram.

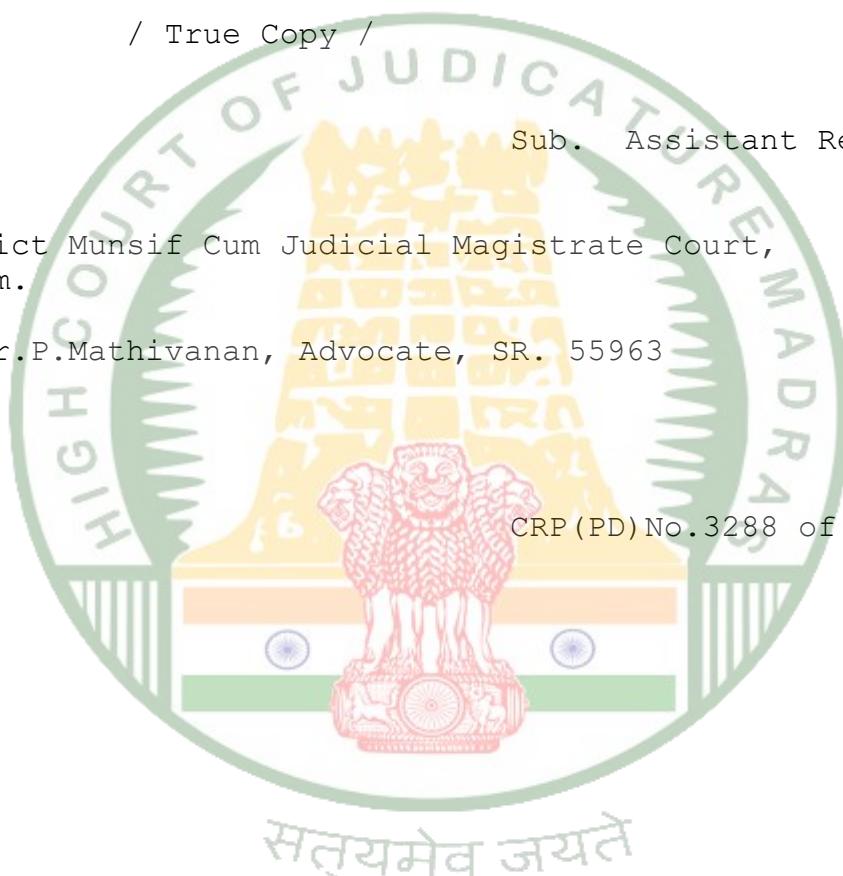
1 cc to Mr.P.Mathivanan, Advocate, SR. 55963

jsv (co)

dv/3.12.

Sub. Assistant Registrar

CRP (PD) No.3288 of 2008



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