

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R. SHIVAKUMAR

**C.R.P.[PD] No.1481 of 2014
and
M.P.No.1 of 2014**

A.Devarajan

... Petitioner/Plaintiff

.. Vs ..

1. A.Kamaraj
2. A.Maharajan
3. S.Karthikeyan

... Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order of the learned II Additional Subordinate Judge, Erode, dated 04.12.2013 made in I.A.No.674 of 2013 in O.S.No.290 of 2005.

For Petitioner	: Mr.T.Gowthaman
For RR-1 and 2	: Mr.V.Balamurugan
For R-3	: Mr.V.Raghunathan
	for M/s.S.Dhanasekaran

- - - - -

ORDER

The plaintiff in the original suit is the petitioner in the revision petition. The respondents 1 and 2 are the brothers of the petitioner. The third respondent (third defendant) is the purchaser of a portion of third and fourth items of the suit properties from the respondents 1 and 2. The suit was filed for declaration of title in respect of plaintiff items 1 and 2 and for partition in respect of items 3 to 5 of the suit properties. The claim of the revision petitioner/plaintiff has been made on the basis that item Nos.1 and 2 and a share in item No.5 belonged to his mother, who left a Will dated 05.06.2001, bequeathing all her properties to the petitioner/plaintiff and that the rest of the properties, where the common properties in which the revision petitioner/plaintiff does have a share in it. Subsequent to the filing of the suit, the petitioner/plaintiff seems to have come across a document showing that the fifth item of the suit properties was also the one purchased by his mother and hence, he filed a petition I.A.No.674 of 2013 on the file of the trial Court for amendment of the plaint regarding the prayer made in respect of the fifth item. By such amendment, the petitioner wanted to change the prayer for partition

into one for declaration of title in respect of the fifth item of the suit properties.

2. The petition was resisted quite naturally by the respondents herein on the ground that the petitioner/plaintiff wanted to deviate from the stand taken from the original plaint. The petitioner has made it clear that the prayer for partition was made in respect of the fifth item of the suit properties on an erroneous assumption that his mother owned only a share in the property, whereas, subsequently he came across a Sale Deed dated 13.03.1987 showing that the said property, in entirety, was purchased by his mother and it was also referred to in the Will propounded by the petitioner as the property of the testator namely, the mother of the petitioner and that the same necessitated the petitioner to approach the Court with a petition for amendment. The mistake due to the ignorance of the existence of the prior title deed alone is sought to be rectified. If the mistake is not rectified, then there will be an apparent conflict between the plea made in the plaint and the documents to be produced by the plaintiff. The mere fact that the plaintiff is allowed to alter the prayer in respect of the fifth item of the suit properties does not mean that his

claim in respect of the said item is going to be upheld. The *bona fide* mistake in coining the pleading alone is sought to be rectified. After such rectification, the respondents shall have the right to file additional written statements resisting the altered claim in respect of the fifth item of the suit properties. When such is the case, this Court does not find any merit in the resistance made by the respondents for the proposed amendment. The learned trial Judge, without approaching the problem in proper perspective, committed an error in not exercising its power of permitting the amendment sought for. The same shall be a valid ground for interfering with the same and setting aside the order of the trial Court dated 04.12.2013.

3. In the result, the Civil Revision Petition is allowed. The order of the trial Court dated 04.12.2013 made in I.A.No.674 of 2013 is set aside. I.A.No.674 of 2013 in O.S.No.290 of 2005 pending on the file of the trial Court shall stand allowed.

4. The petitioner/plaintiff shall be permitted to amend the plaint as prayed for in the petition. The plaintiff shall also pay Court fee for the altered prayer in respect of the fifth item of the suit

properties before effecting amendment. The exercise of payment of the additional Court fee and carrying out the amendment shall be completed within a period of two weeks from the date of receipt of a copy of this order in the trial Court. After amendment, the respondents/defendants shall be given a reasonable opportunity to file their additional written statement. Thereafter, the trial Court shall proceed with the trial without giving avoidable adjournment and dispose of the case as expeditiously as possible. No costs. Consequently, the connected miscellaneous petition is closed.

04.02.2016

Index :Yes
Internet :Yes
Jrl

To

II Additional Subordinate Judge,
Erode.

P.R. SHIVAKUMAR, J.

C.R.P.[PD] No.1481 of 2014

04.02.2016