

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.4077 of 2016
and C.M.P.No.20569 of 2016

1.V.Dhanalakshmi
2.V.Thilagavathi
3.V.Saratha
4.V.Shanthi
5.V.Kannan

.. Petitioners

Vs.

S.Sarojini (died)

1.Sasikala
2.Mallika
3.Jamuna
4.S.Shanmugasundaram
5.S.Shanthi
6.S.Savithiri
7.S.Krishnamurthy
8.Neelavathi

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 15.03.2016 made in E.A.No.597 of 2015 in E.A.No.471 of 2014 in E.P.No.201 of 2011 in O.S.No.323 of 1991 on the file of the I Additional Sub-Court, Erode.

For Petitioners : Mr.A.Sundaravadhanan
For Respondents : Mr.T.Murugamanickam

ORDER

This civil revision is filed against the fair and decreetal order dated 15.03.2016 made in E.A.No.597 of 2015 in E.A.No.471 of 2014 in E.P.No.201 of 2011 in O.S.No.323 of 1991 on the file of the I Additional Sub-Court, Erode.

2.Heard both sides and perused the typed set of papers.

3.The respondents herein as plaintiffs filed a suit in O.S.No.323 of 1991 for partition and separate possession. A preliminary decree for partition was ordered. Final decree was passed in I.A.No.650 of 1997, on 08.04.2011. In the final decree order and also subsequent proceedings, the year of the I.A. was inadvertently mentioned as 2007. Thereafter, the decree holders filed E.P.No.201 of 2011 for delivery. At that time, judgment debtors/petitioners herein raised objections stating that the order of the final decree is wrongly mentioned. But, the decree holders/respondents herein, instead of filing application under Section 152 C.P.C. for amending the final decree and judgment,

filed E.A.No.471 of 2014 for amending the execution petition under Order VI Rule 17 C.P.C. The said application was allowed on 06.04.2015 after the petitioners herein/respondent in E.A.No.471 of 2014 were set exparte. But the above order is illegal. Hence, the petitioners herein filed an application to set aside the exparte order passed against them on 06.04.2015 in E.A.No.471 of 2014 and the said application was dismissed on 15.03.2016. Challenging the same, the present revision is preferred by the petitioners/judgment debtors.

4.Considering the above stated facts and circumstances, it is admitted by both the parties that final decree application number has been wrongly mentioned as I.A.No.650 of 2007, instead of I.A.No.650 of 1997. On that basis only, E.P has been filed. It is the duty of the decree holder/plaintiff to file an appropriate application under Section 152 CPC to amend the final decree and judgment. However, without amending the same, he had filed an application in E.A.No.471 of 2014 for amending the I.A number and the same was allowed, which is illegal and non-est in the eye of law, since the executing Court cannot go beyond the decree. Once the order passed on 06.04.2015 in E.A.No.471 of 2014 is illegal, there is no

necessity to set aside the said order. So, the application filed in E.A.No.597 of 2015 is unnecessary. Now, the learned counsel for the respondent had agreed to file an application. So, it would be appropriate on the part of the Court to give a direction to the plaintiffs/petitioners to file an application under Section 152 CPC to amend the decree and judgment passed in the final decree proceedings in I.A.No.650 of 1997 and thereafter, they are entitled to file an execution petition.

5.In the result, the Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

19.01.2017

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R.MALA, J

kj

To

I Additional Sub-Court, Erode.

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