



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2017

CORAM:

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P(PD) (MD)No.900 of 2017

and

C.M.P. (MD). No.3964 of 2017

S.H.Naina Mohamed

.. Petitioner/Petitioner/
2nd Respondent/2nd Defendant

Vs.

S.Shiek Mohamed

.. Respondent/Respondent
petitioner/plaintiff

PRAYER: This Civil Revision Petition is filed under Section 227 of Constitution of India to number the Un-numbered I.A.No. of 2017 in I.A.No.353 of 2013 in O.S.No.89 of 1991 on the file of the Sub Court, Dindigul, Dindigul District.

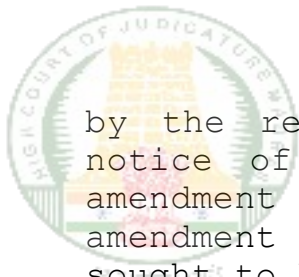
For Petitioner : Mr.G.Gomathi Sankar

ORDER

The Civil Revision Petition filed to direct the Sub Court, Dindigul to number the Un-numbered I.A.No. of 2017 in I.A.No.353 of 2013 in O.S.No.89 of 1991 on the file of the Sub Court, Dindigul, Dindigul District.

2.In a suit filed for partition in the year 1991, preliminary decree was passed on 19.01.1998. Aggrieved by that, the parties have gone up to Supreme Court and the decree is confirmed. While so, the revision petitioner who is the defendant in the partition suit has taken out an application to amend the description of the property by adding a word 'end of the eastern side'. Since, such an amendment will alter the entire scope of the partition decree, the trial Court has returned the Interlocutory Application stating that after the suit reaching finality up to the Hon'ble Supreme Court by way of S.L.P. No.86 of 2010, how an application to amend the description of the property is maintainable?

3.The learned counsel for the revision petitioner submitted that even in the sale deed of the year 1953, the description of the property carries the word 'end of eastern side' whereas, while filing the suit, the plaintiff has omitted the word 'end' and has mentioned only 'eastern side'. The omission was noted only now



by the revision petitioner/defendant to bring the fact to the notice of the Court to arrive at appropriate conclusion, the amendment is necessary, whereas, the Court has returned the amendment petition without considering the formal amendment sought to be made.

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4.Considering the affidavit filed by the revision petitioner in support of his application to amend the description of the suit property, this Court finds that all along, the defendant was agitating against the partition based on the description of the property provided in the plaint. Only at the stage of final decree, now, taking advantage of the description made by the Advocate Commissioner in I.A.No.353 of 2013, the present plea of adding the word 'last' to the eastern side sought to be added. If such an application is allowed at this stage, based on the rough sketch given by the Advocate Commissioner, the entire course of the trial gets changed. By way of proposed amendment the revision petitioner wants some other property which is not the subject matter of the decree of the Trial Court and confirmed upto the Hon'ble Supreme Court. Therefore without any substantial reason or justification, the application been presented and hence the Court below has returned the Interlocutory Application.

5.This Court finds no merit in this revision petition. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Dindigul,
Dindigul District.

+1cc to M/s.G.Gomathi Shankar, Advocate, Sr No.53624

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and
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24.04.2017

KM/MR

MS/MR/12.05.2017/2P.3C