



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.R.P. (PD) (MD) .No.1934 of 2018 (NPD)

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R.Chandrasekaran

... Revision Petitioner

Vs

1.R.Rajasekaran

V.Arumugam (died)

2.Paramasivam

3.Muthulakshmi

4.Silambarasan

5.Veeramani

6.Divya (minor)

represented by her mother and next friend

A.Muthulakshmi

7.Chinnathal

... Respondents

PRAYER : Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 06.03.2018 made in I.A.No.39 of 2017 in A.S.No.2 of 2004 on the file of the Court of the Principle Subordinate Judge, Thanjavur and allow the present Civil Revision Petition.

For Petitioner : Ms.J.Maria Roseline

For R2 : Mr.S.Parthasarathy

For R3 to R5 & R7: No appearance

ORDER

The plaintiff in O.S.No.294 of 1997 on the file of the District Munsif Court, Thanjavur, is the revision petitioner herein. It is a suit for specific performance. The suit was originally dismissed. But on appeal it was decreed. The defendants filed S.A (MD)No.951 of 2008 before this Court. But the Second Appeal was dismissed. S.L.P.No.30412 of 2016 filed before the Hon'ble Supreme Court also suffered a dismissal. Thereafter, the revision petitioner filed E.P. It was then realised that eventhough in the suit, the plaintiff wanted relief only against D1 and D3, due to oversight the First Appellate Court given relief against D1 to D3. It is this now sought to be corrected by invoking Sections 152 and 153 of CPC.

2.The First Appellate Court by the order impugned in this Civil Revision Petition has held that since, a review petition in respect of the Second Appeal judgment is still pending at the time of the present revision petition, it will not be in a position to consider I.A.No.39 of 2017 and since finality is yet to be reached, the first Appellate Court was not inclined to allow the I.A. The reason given



by the First Appellate Court is that the mistake pointed out by the plaintiff cannot be said to be a clerical error. Aggrieved by the aforesaid order passed by the First Appellate Court, this Civil Revision Petition has been filed.

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3. Heard the learned counsel on either side.

4. The learned counsel appearing for the respondents reiterated the stand of the Court below and wanted this Court to sustain the same.

5. Admittedly, the suit filed by the revision petitioner was decreed. This Court had a look at the prayer in the plaint. The revision petitioner had sought the relief only against D1 and D3. No relief has been sought against D2. Therefore, there cannot be any difficulty in permitting the correction now sought for. Though, the plaintiff has invoked only Section 152 of CPC, I am of the view that Section 151 of CPC can also be invoked. Section 153 of CPC enshrines the general power to amend.

6. Secondly, mere pendency of review petition need not come in the way of granting the relief now sought for. Admittedly, the Second Appeal filed by the defendants was dismissed and the same is holding good as on date.

7. The learned counsel appearing for the revision petitioner also comes forward to exonerate the second defendant and his legal representatives from the execution proceedings. This undertaking is recorded. The order impugned in this Civil Revision Petition is set aside and I.A.No.39 of 2017 is allowed.

8. Accordingly, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (T&P)

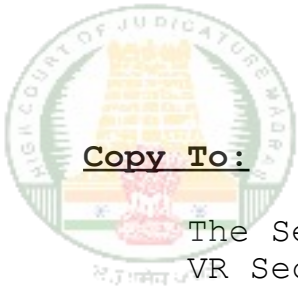
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Sub Assistant Registrar (CS-II)

To

1. The Principle Subordinate Judge,
Thanjavur.

2. The District Munsif,
Thanjavur.

**Copy To:**

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+1CC TO MR.S.PARTHASARATHY, ADVOCATE IN SR.NO.91028.
+1CC TO MS.J.MARIA ROSELINE, ADVOCATE IN SR.NO.91092.

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ORDER MADE IN
C.R.P. (PD) (MD) .No.1934 of 2018