

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 01.07.2019

DELIVERED ON 12.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.3685 of 2010 and
M.P.No.1 of 2010

1. A.Subramani
2. Chinna Annamalai

... Petitioners

Vs.

1. Selvarani
2. Natarajan
3. Annamalai
4. Chinammal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 22.07.2010 made in I.A.No.575 of 2010 in O.S.No.1281 of 2007 by the Principal District Munsif, Salem.

For Petitioners : Mr.A.Bharath
for Mr. Muthumani Doraisami

For Respondents : Mr.S.Saravanakumar

ORDER

The civil revision petitioners are the plaintiffs in O.S.No.1281 of 2007 on the file of the Principal District Munsif, Salem. They filed the suit for declaration of their title to the suit property and for consequential relief of permanent injunction restraining the respondents/defendants from interfering with their peaceful possession and enjoyment of the suit properties.

2. The respondents/defendants filed a written statement and after full contest, the learned Principal District Munsif, Salem, decreed the suit in favour of the plaintiffs vide his decree and judgment dated 10.09.2009. He also held that the plaintiffss are entitled to 1.77-3/4 acres in S.No.28/1 in Karumapuram Village, Vazhapadi Taluk, Ayothiya Pattinam Sub District, Salem District. Subsequently, the respondents filed a petition in I.A.No.575 of 2010 in O.S.No.1281 of 2007 under Section 152 of the Code of Civil Procedure praying to amend the decree passed by the Principal District Munsif, Salem. In the said application, the respondents/ defendants had contended that in the decree and judgment dated 10.09.2009, the trial court had clearly held that there was a partition among the four brothers namely Annamalai, Arunachalam, Arthanari and Arumugam in respect of 4.71 acres land and each of them were allotted 1/4 share. It is further contended in the petition that if 4.71 acres is divided by four, each one

would be entitled to 1.17-3/4 acres only and however, the learned Principal District Judge in the decree and judgment had wrongly mentioned as 1.77-3/4 acres of land. The civil revision petitioners filed counter in the said I.A.No.575 of 2010 in O.S.No.1281 of 2007, denying all the allegations of the petitioners.

3. The learned District Munsif, Salem, after analysing the evidence on record, allowed the petition by concluding that if 4.71 acres is divided by four, the actual extent would 1.17-3/4 acres and not 1.77-3/4 acres and that since it is a typographical error, the same has got to be altered in the decree and judgment. Aggrieved over the orders passed by the learned Principal District Munsif, Salem, dated 22.07.2010, the civil revision petition is filed.

4. The learned counsel appearing for the revision petitioners drew the attention of this court to the suit properties indicated in the plaint schedule and contended that the plaintiffs are entitled to 0.35 Hectares in S.No. 28/1D and 0.37 Hectares in S.No.28/1B of Karumapuram Village, Vazhapadi Taluk, Ayothiyapattinam Sub District, Salem District and thus the plaintiffs are totally entitled to 0.72 Hectares and if the same is converted into Acres, it would come to 1.77-3/4 acres and not 1.17-3/4

acres, as contended by the respondents. Their further contention is that the learned Principal District Munsif, Salem in his judgment dated 10.09.2009 had clearly concluded that the plaintiffs are entitled to an extent of 1.77-3/4 Hectares land in S.No.28.1, which was sub divided into 28/1B and 28/1D and therefore, the respondents/defendants cannot file a petition under Section 152 of the Code seeking amendment of the decree, especially when they have not filed any appeal against the decree and judgment passed by the trial court.

5. He also relied on the decision in *Dwarka Das V. State of Madhya Pradesh and another reported in AIR 1999 Supreme Court 1031* and contended that Section 152 of the Code of Civil Procedure provides for correction of clerical or arithmetical mistakes in judgments, decrees or errors arising therein from any accidental slip or omission only. After passing of the judgment, decree or order, the Court becomes functus officio and cannot vary the terms of the judgments, decrees and orders earlier passed. His specific contention is that the learned Principal District Munsif, Salem has categorically held that the plaintiffs are entitled to 1.77-3/4 acres in S.No.28/1B and 18/1D in Karumapuram Village, Vzhapadi Taluk, Ayothiya Pattinam Sub District, Salem District and hence, the said decree and judgment cannot be altered subsequently under Section 152 of the

Code of Civil Procedure.

6. Per contra, the learned counsel appearing for the respondents contended that the learned Principal District Munsif had clearly held that the deceased Annamalai Gounder (senior) owned 4.71 acres of land in S.No.28/1 in Karumapuram Village, Vazhapadi Taluk, Ayothiya Pattinam Sub District, Salem District through whom the plaintiffs claim title and the judgment says that 4.71 acres had to be divided by four. However, while dividing 4.71 acres by four, the court had wrongly mentioned the result as 1.77-3/4 acres instead of 1.17-3/4 acres, which is only an arithmetical error. Therefore, the petition filed under Section 152 of the Code of Civil Procedure is maintainable and the orders passed by the learned Principal District Munsif, Salem is also perfectly in order.

7. At the outset, it may be observed that the revision petitioners/ plaintiffs in the plaint schedule at one place indicated the suit property as S.No.28/1D measuring 0.35.0 Hectares and in another place had indicated as S.No.28/1D measuring 0.38.0 Hectares. It is also indicated that the suit property is situated in S.No.28/1D measuring 0.38.0 Hectares. The plaintiffs claimed the suit property on the basis of a Will dated 11.03.1991 (Ex.A1). The learned Principal District Munsif, Salem had categorically held

that the deceased Annamalai was entitled to 4.71 acres in S.No.28/1, which was divided by 4 equal shares among the 4 brothers in the year 1959. While dividing 4.71 Acres of land by four, the learned Principal District Munsif, Salem, instead of mentioning the same as $1.17\frac{3}{4}$, had mentioned as $1.77\frac{3}{4}$ and it seems to be a typographical error and the plaintiffs cannot take advantage of this fact.

8. Even in the decision in ***Dwarka Das V. State of Madhya Pradesh and another reported in AIR 1999 Supreme Court 1031*** (cited supra) relied on by the learned counsel appearing for the revision petitioners, it is clearly held that as per Section 152 of the Code of Civil Procedure, any clerical or arithmetical mistakes in judgments, decrees or orders can be corrected under Section 152 of the Code of Civil Procedure. In the instant case, since the learned Principal District Munsif, Salem had committed a mistake while calculating the share of the plaintiffs, the same can be corrected by filing a petition under Section 152 of the Code of Civil Procedure. Therefore, the orders passed by the learned Principal District Munsif, Salem is perfectly in order and I do not find any reason to interfere with the orders passed by the trial court.

9. In the result, the civil revision petition is dismissed. No costs. The connected civil miscellaneous petition is dismissed. The orders passed by the trial court is upheld.

12.07.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

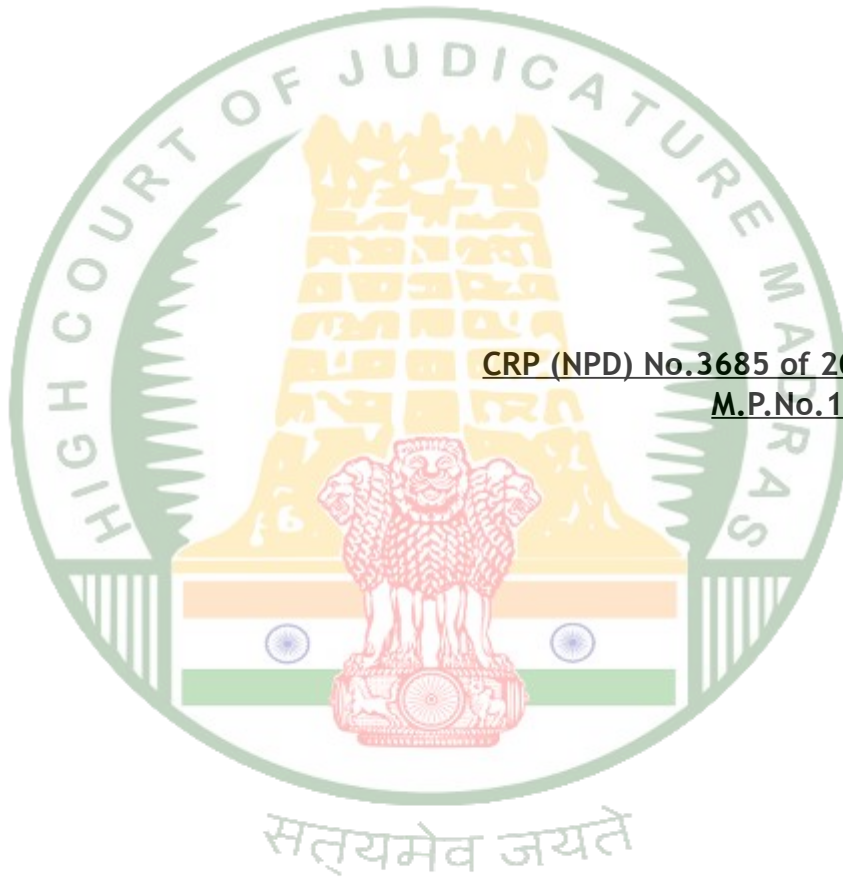
To

The Principal District Munsif, Salem.



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R.HEMALATHA,J.
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