

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.4559 of 2014

and

CMP Nos.19662 and 20350 of 2018

and

MP No.1 of 2014

S. Hari

... Petitioner

Vs

1. S. Mohan

2. M.Ranjith Kumar

3. S. Munirathinam

... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decretal order dated 09.07.2014 made in I.A. No.83 of 2014 (I.A. No.156 of 2012) in O.S. No.17 of 2004 on the file of the Subordinate Judge Court, Arakkonam in so far as against the petitioner, in respect of disallowed portion of his prayer sought for in said I.A. Is concerned. .

For petitioner

: Mr.S. Parthasarathy
Senior Counsel for
Mr.J.Ramakrishnan

For respondents

: Mr.K.Bakthavachalu for RR1 and 2
Mr.S. I. Muthiah for R3

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 09.07.2014 passed by the learned Subordinate Judge, Arakkonam in I.A. No.83 of 2014 in O.S. No.17 of 2004.

Brief facts leading to the filing of the instant Revision Petition are as follows :-

2. The petitioners in I.A. No.83 of 2014 are the defendants 1 and 3 in the suit O.S. No.17 of 2004 filed by the 1 and 2 respondents, who are the plaintiffs. The suit was filed by the respondents for partition against the petitioners as well as the other defendants. A preliminary decree was passed and thereafter, a final decree dated 02.01.2012 was passed by the Trial Court in O.S. No.17 of 2004. Subsequent to the passing of the final decree, the petitioner, who is the 3rd defendant in the suit along with his father A.Sriramulu Naidu, who is the first defendant in the suit filed an application under Section 152 of the Code of Civil Procedure, seeking amendment of the final decree, dated 02.01.2012 on the ground that there are clerical and typographical mistakes as well as accidental omissions in the final decree. The petitioner has listed out various amendments, which he is seeking in his affidavit filed in support of I.A. No.83 of 2014 filed under Section 152 of Civil Procedure Code.

3. A counter affidavit has also been filed by the respondents 1 and 2, who are the plaintiffs 1 and 2 in the suit stating that the application filed by the petitioners discloses not only clerical and typing errors but also seeks for correction of the decision of the Court on certain points. Apart from that in respect of certain amendments sought for by the petitioner, they have stated no objection for allowing the same.

4. The Trial Court by its order dated 09.07.2014 in I.A. No.83 of 2014 has partly allowed the application by permitting the amendment sought for by the petitioners in Sl. Nos. 1 to 5, 12, 20, 21, 22, 24, and 25, holding that they are typographical errors and in respect of other amendments sought for in the petition, the same were rejected by the Trial Court on the ground that they are not clerical, typographical errors or omissions and held that if at all, the petitioner is aggrieved, his only remedy is to file an appeal in respect of those amendments. Aggrieved by the disallowed amendments in I.A. No.83 of 2014 in O.S. No.17 of 2004, the instant Civil Revision Petition has been filed.

5. Heard Mr.S. Parthasarathy, learned Senior Counsel appearing for the petitioner; Mr.K.Bakthavachalu, learned counsel appearing for respondents 1 and 2 and Mr.S.I. Muthiah, learned counsel for the 3rd respondent.

6. The only point for consideration in this revision is whether the amendments sought for in I.A. No.83 of 2014 in O.S. No.17 of 2004 are to correct the clerical or typographical mistakes that had allegedly crept in the final decree or whether there was omission or any accidental slip made by the Trial Court while passing the final decree.

7. This Court has perused the affidavit filed in support of I.A. No.83 of 2014 as well as the counter affidavit filed by the respondents 1 and 2. Several amendments have been sought for under Section 152 of the Code of Civil Procedure by the petitioner herein. In the counter affidavit, the 1 and 2 respondents, who are the plaintiffs in the suit have infact stated no objection for certain amendments sought for by the petitioners. The first and second respondents have no objection for amending the mistakes sought for by the petitioners in paragraph 8 (1) to (7), (11), (12), (13), (14), (15), (18), (19), (20), (21), (22), First portion of paragraph (23) para (24), (25), (25), (27), (28), (29) First portion of para (30) Para (31), (33) and (34). They have admitted that the aforesaid mistakes are typographical or clerical mistakes or accidental omissions. But, they have stated that the remaining amendments sought for by the petitioners are beyond the scope of Section 152 of the Code of Civil Procedure. At the same time, they have not pinpointed in their counter affidavit with respect to each of those amendments as to how they will be changing the

decision rendered in the final decree, dated 02.1.2012.

8. The Trial Court by the impugned order dated 09.07.2014 in I.A. No.83 of 2014 in O.S. No.17 of 2004 has partly allowed the application filed by the petitioner by permitting him to carry out the amendment with regard to serial Nos. 1 to 5, 12, 20, 21, 22, 24 and 25 mentioned in the petition as they were found to be typographical errors. In respect of other amendments sought for, the Trial Court rejected the same, without assigning any reasons on the ground that they are not clerical / typographical errors or omissions. While deciding any proceeding, a Court ought to assign reasons for allowing or rejecting the relief sought for by the petitioners. In the instant case, as seen from the impugned order, no reasons have been given for disallowing the remaining amendments sought for by the petitioner in I.A. No.83 of 2014 filed under Section 152 of Civil Procedure Code.

9. Section 152 of Civil Procedure Code reads as follows :

“152. Amendment of judgments, decrees or orders? Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

10. As seen from Section 152, of the Code of Civil Procedure any

judgment / decree or order can be amended suomoto by the Court or at the request of any of the parties, if there are clerical or arithmetical mistakes or if there is any accidental omissions in the judgments, decrees or orders arising therein from. Before this Court, it is the contention of the learned counsel for the respondents that the remaining amendments, which were disallowed by the Trial Court, changes the outcome of the final decree and therefore, the only remedy available to the petitioner is to file an appeal and therefore, the application under Section 152 of the Code of Civil Procedure is not maintainable. But, unfortunately in the case on hand, even though the respondents 1 and 2 have taken such plea, the Trial Court by a non-speaking order without any discussion has allowed certain amendments and has disallowed the other amendments sought for by the petitioner. Unless and until reasoning is given by the Trial Court for allowing or rejecting the amendments, this Court cannot decide as to whether the impugned order passed by the Trial Court is correct or not. Therefore, this Court is of the considered view that this is a fit case for remanding the matter back to the Trial Court for fresh consideration in respect of the disallowed amendments, which are the subject matter of the challenge in this revision. However, it has to be made clear that no fresh amendments cannot be sought for while the matter is reconsidered once again by the Trial Court. In view of the long pendency of the dispute between the parties and in the interest of both the parties, the subject dispute has to be decided expeditiously.

11. In the result, the impugned order, dated 09.07.2014 passed by the Trial Court in I.A.No.83 of 2014 in O.S. No.17 of 2004 is hereby set aside only in respect of the disallowed amendments and the matter is remanded back to the Trial Court for fresh consideration in accordance with law. The Trial Court is directed to dispose of I.A. No.83 of 2014 insofar as the disallowed amendments are concerned, within a period of two months from the date of receipt of a copy of the order. The respective parties shall appear before the Trial Court on 17.06.2019.

12. In the above terms, the Civil Revision petition stands disposed of. No costs. Consequently, connected miscellaneous petition are closed.

11.06.2019

Note to office : Registry is directed to send a copy of this order to the Trial Court for information, forthwith.

Issue order copy on 12.06.2019.

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
vsi2

To
The Subordinate Judge, Arakkonam

ABDUL QUDDHOSE, J.

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