

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.(PD) No.2528 of 2017 and
C.M.P.No.11946 of 2017

1.Jayalakshmi
2.R.Krishnaswamy

... Petitioners

Vs.

S.Ponnaiyan (Died)

1.Chinnammal
2.Kamaraj
3.Meenachi
4.Kumutha
5.Sadasivam
6.Muthu
7.Gopal
8.Govindaraju
9.P.Mariappan
10.Mariammal

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, praying to set aside the Docket order of Memo dated 28.03.2017 passed by the learned Sub Judge at Mettur in O.S.No.66 of 2009.

For Petitioners

: Mr.Saraswathi Muthiah

For Respondents

: Mr.Jaikumar
For M/s.T.Fennwalter Associates

ORDER

This revision petition has been filed against the docket order made on the memo filed by the revision petitioners/plaintiffs, by order dated 28.03.2017 of the learned Sub Judge at Mettur in O.S.No.66 of 2009.

2.Before the trial Court, suit for partition was filed by the revision petitioners/plaintiffs where an application to amend the plaint was filed in I.A.No.546 of 2017, where, eight such amendments were sought for. The said application since has been allowed, after carrying out the amendment, the amended plaint copy was also filed by the petitioners/plaintiffs. After filing the amended plaint copy, the petitioners/plaintiffs seems to have filed the memo before the trial Court to return the APC for further amendment or to make the correction in the amended plaint copy, the said memo was rejected, through the impugned order, as against which, the present revision has been filed.

3.Heard Mrs.S.R.Saraswathi Muthiah, learned counsel appearing for the petitioners/plaintiffs and Mr.Jaikumar, learned counsel appearing for the respondents/defendants.

4.The learned counsel appearing for the petitioners submits that, out of the eight items sought to be amended, which was, in fact, permitted by the Court below, after having carried out the amendment, the amended plaint copy was filed where the 7th item viz., to make correction in valuation slip by deleting the figure which was existing as Rs.1,73,350/- as the market value of the share claimed by the petitioners/plaintiffs, has to be replaced as Rs.2,62,025/- as market value of the property i.e., share claimed by the petitioners/plaintiffs.

5.Though the said amendment was allowed, in the amended plaint copy, in the valuation column of the properties for the purpose of market value as well as the purpose of Court fee, it has been wrongly mentioned as Rs.1,73,350/- that is the old figure, without carrying out the correction by making the figure as Rs.2,62,025/-. Therefore, that become necessitated the revision petitioner to seek for permission of the Court to get back the amended plaint copy and to carry out the corrections in the amended plaint copy and to refile the same.

6.I have heard the learned counsel appearing for the respondents/defendants, who would submit that, the amendment was allowed in the year 2013, thereafter, the trial was commenced and the trial was almost in the advanced stage, at this juncture, the present memo has been filed to carry out further correction or amendment in the already filed APC and he sought for returning of the APC and the same was rightly rejected by the Court below, hence, it requires no interference from this Court.

7.I have heard the learned counsel appearing for the parties and also considered the materials filed before this Court.

8.As has been noticed, the amendment sought for in eight items since has been permitted by the Court below, the amendment had been carried out and the amended plaint copy was also filed, thereafter, trial was commenced and the same was in the advanced stage.

9.At this juncture, the petitioners/plaintiffs filed the present memo to return back the APC to make correction in the amended

plaint copy to state that, instead of Rs.2,62,025/- as the value of the share for the property, it has been wrongly mentioned as Rs.1,73,350/- i.e., the earlier figure in the unamended plaint has once again been retained, without actually carried out the amendment as permitted, in item No.7 in the amended plaint copy.

10. Even though the said mistake occurred due to oversight or any other reason, the petitioners/plaintiffs could have corrected it at the earliest, after having waited for all these long years, after the trial went on to the advanced stage, now the present memo has been filed.

11. Though it is a necessity to carry out the said correction, the attitude of the revision petitioners/plaintiffs to wait for years together to file this memo and seek indulgence of the Court to return the amended plaint copy, based on which, the trial was already conducted, shows the attitude and cavalier manner on the part of the revision petitioners/plaintiffs, to agitate the issue.

12. In that view of the matter, even though this Court is inclined to allow this revision by giving direction to the Court below to permit

the petitioners to carry out the corrections in the amended plaint copy without returning the same, this Court feels that, for the lethargic and cavalier attitude on the part of the revision petitioners/plaintiffs, the respondents/defendants since unnecessarily were driven to Court after Court and this revision also is an unwarranted one from the point of view of the defendants/respondents, therefore, this Court feels that, if at all this petition is allowed, it shall be only on terms of heavy cost.

13. In that view of the matter, this Court is inclined to dispose of this revision, with the following order:

(i) That the impugned order is set aside and the matter is remitted back to the Court below with a direction to permit the petitioners to carry out the correction at the valuation of immovable property for the purpose of Court fees in Item No.7 as Rs.2,62,025/- instead of Rs.1,73,350/-, since the said amendment has already been permitted by the trial Court, without returning the APC to the revision petitioners/plaintiffs.

(ii) This order is passed on condition that, the revision petitioners shall pay a hefty cost of Rs.10,000/-

(Rupees Ten thousand) to the respondents/defendants within a period of two weeks from the date of receipt of a copy of this order, failing which or the proof for making the said cost is not filed before the Court below, the trial Court need not allow the petitioners to carry out the correction as directed above.

14. With these conditions, this Civil Revision Petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed.

25.11.2019

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To

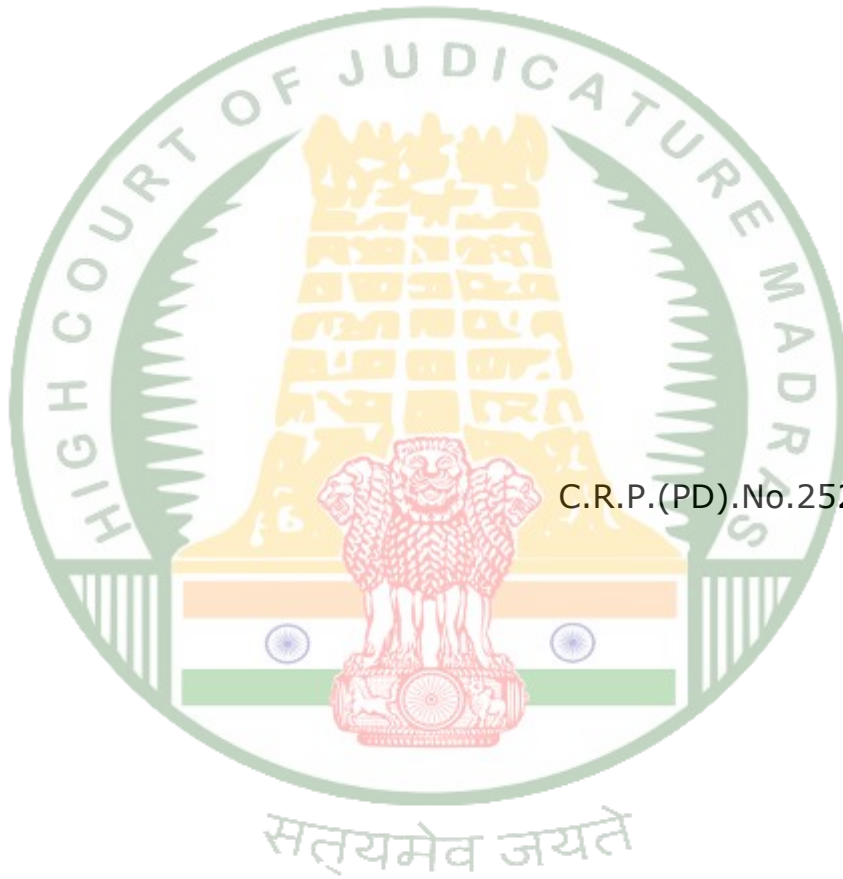
The Sub Judge,
Mettur.

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R.SURESH KUMAR, J.

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