

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.3703 of 2013

1.Devarajan (died)

2.Sampath

3.Janaki

4.Lakshmi Narasimhan

5.Aravamudhan

6.D.Narasimhan

6th appellant brought on record

as LR's of the deceased 1st petitioner

viz., Devarajan vide court order

dated 03.01.2020 made in CMP.18978/2019

..Petitioners/Defendants 8 to 12

Vs

1.C.P.Mythili

..1st respondent/Plaintiff

2.K.T.Srinivasan

3.Arumugam

4.Arjunan

5.Annakiliyammal

6.V.T.Rangachari

7.Kasturi

8.Suseela

9.Yogavalli

..Respondents 2 to 9

/Defendants 3 to 7 & 13 to 15

Prayer: Civil Revision Petition filed under Section 115 of CPC against the

fair and decretal order dated 25.04.2013 passed in I.A.No.117 of 2007 in

O.S.No.82 of 1982 on the file of the Court of the District Munsif cum Judicial Magistrate Court, Uthiramerur.

For Petitioners : Mr.K.Govi Ganesan

For respondents : Mr.Elizabeth Ravi for R1
R2 to R9 -Given up

ORDER

The 1st respondent herein is the plaintiff in O.S.No.82 of 1982 on the file of Court of Subordinate Judge, Kanchipuram. The petitioners are defendants 8 to 12 in the said suit. The respondents 2 to 9 herein are the defendants 3 to 7 and 13 to 15.

2. The 1st respondent herein filed the suit against the petitioners and other respondents herein in O.S.No.82 of 1982 on the file of the Court of Subordinate Judge, Kanchipuram, for partition and separate possession for 7/8 share in the suit schedule mentioned properties. The said suit was decreed on 13.08.1991 and preliminary decree was passed therein. Based on the preliminary decree, the 1st respondent filed application for passing of the final decree in I.A.No.390 of 1992 and the said application was allowed and final decree was passed on 28.02.2003. Thereafter, the 1st respondent filed Execution Petition and during the execution proceedings, the 1st respondent

herein found some typographical error in mentioning the survey numbers and filed application in I.A.No.117 of 2007 in O.S.No.82 of 1982, under Section 151 of CPC to amend the final decree. The said petition was allowed and challenging the order passed by the trial court, the petitioners/defendants 8 to 12 filed the present revision before this court.

3. The learned counsel for the petitioners would submit that without amending the preliminary decree, final decree cannot be amended and also the application filed under Section 151 CPC is not maintainable and without seeking the amendment in the plaint and preliminary decree, straight away, in the final decree, schedule of the property alone cannot be amended. The 1st respondent wants to delete 4 items of properties and wants to introduce 15 items of properties and substitute them in the final decree which is highly impermissible in law. The 1st respondent / plaintiff has not stated the reason for amending the final decree alone. The 1st respondent has not substantiated either by oral or documentary evidence to show that the entire village has been resurveyed and fresh survey numbers have been given to the suit properties. The learned Judge failed to see that the 1st respondent in her affidavit has stated that Survey No.459/1C must be Survey No.458/1C. But in Plaint, Preliminary Decree as well as Final Decree, the Survey No.459/1C is

not clearly mentioned whereas Survey Number 458/1C1 is correctly mentioned in the plaint and Preliminary Decree. Therefore, the learned Judge failed to consider the said fact and he has allowed the petition as if the 1st respondent has filed the amendment application in the suit pre-trial stage. The learned Judge failed to see that the amendment sought for differ with each other and introduce new and fresh items of properties in substitution of suit properties and no correlation is mentioned in the petition relating to suit properties sought to be amended. In this case, after passing of the final decree, 1st respondent has filed the application as if there is a clerical error and correction only in the final decree, which is not correct and suit was tried long back and decided on the Plaint Schedule Properties and that cannot be substituted by new properties and the remedy of the 1st respondent is to file fresh suit in respect of new properties. In order to substantiate the said contentions, the learned counsel has placed reliance on the judgment reported in 1998 (2) CTC 345.

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4. The learned counsel for the first respondent would submit that after obtaining the final decree, when the first respondent filed the execution petition, at that time, she found that some discrepancy in that and since she was unable to execute the warrant, filed amendment application to amend the

final decree, in order to execute the decree with correct survey numbers. Further the learned counsel would submit that there is no change in extent and the boundaries and only some of the survey numbers subsequently sub divided and hence, sub division number of the house property, patta, survey number, door number of the suit properties was wrongly mentioned. Therefore, 1st respondent wanted to amend the properties and if the amendment is made, no prejudice would be caused and hence, rightly, the trial Judge, has allowed the petition and no interference is required in this revision. The learned counsel also placed reliance on the following decisions:-

- (1) AIR (2003) 2 SCC 330. [**Pratibha Singh And Another vs Shanti Devi Prasad And Another**]
- (2) (2006) 4 SCC 385 [**Rajesh Kumar Aggarwal & Others Vs. K.K.Modi and Others**].

5. Heard and perused the records.

6. Admittedly, the 1st respondent filed the suit in O.S.No.82 of 1982 on the file of Subordinate Judge, Kanchipuram, for partition against the petitioners herein and other respondents herein. In the said suit, preliminary decree was passed on 13.08.1991. Thereafter, application in I.A.No.390 of 1992 was filed for passing of the final decree. Final decree was also passed

on 28.02.2003. Thereafter, the 1st respondent filed application in I.A.No.117 of 2007 under Section 151 CPC to amend the schedule of properties in the final decree. The said petition was allowed and challenging the same, the petitioners/defendants 8 to 12 have filed the present revision.

7. The learned counsel for the petitioners would mainly contend that petition under Section 151 CPC is not maintainable and without amending the plaint, preliminary decree, final decree alone cannot be amended and without even substantiating the same either by oral or documentary evidence. Further, no document has been produced to show that resurvey has taken place and sub division was taken in the properties after passing of the preliminary decree. Therefore, the trial Judge failed to consider the said fact. Though the learned counsel for the 1st respondent would submit that there is no change in the extent and boundaries, but on reading of the plaint and preliminary decree itself, it is apparent that regarding the landed properties, boundaries have not been given, in respect of the house property alone boundaries have been given, but survey numbers have been wrongly given. What they have stated in the plaint reflected in the preliminary decree and the same was reflected in the final decree. Therefore, if at all for convenience of the execution of the final decree, at later stage, they came to know the

discrepancy, they should have filed the application to amend the plaint, preliminary decree and then only, they can amend the final decree. As per Section 152 of CPC, clerical or arithmetical mistakes in judgment, decree or orders or error arising therein from any accidental slip or omission can be corrected by the court either of its own motion or on the application of any of the parties. But in this case, no typographical error is committed by the court, whether it is clerical error or arithmetical error while typing the survey numbers in respect of schedule mentioned properties in the final decree. Therefore, in such circumstances, amending the final decree alone is not correct. Firstly, they should have amended the plaint schedule properties as well as preliminary decree and thereafter only final decree. Otherwise, even assuming that there is no change in extent and boundaries, the trial Judge should have examined and conducted enquiry through Advocate Commissioner and through revenue officers by perusing revenue records as well as the documents and after that, the trial Judge can permit the parties to amend the plaint schedule, the preliminary decree as well as final decree. The trial court failed to verify the records in the manner known to law and the correlation certificates for the survey numbers of the suit mentioned properties from the revenue authority. But, simply allowed the application as if it is pre-trial stage in the suit. Therefore, without amending the plaint and

preliminary decree, final decree alone cannot be amended as if only there is clerical or arithmetical mistake has been committed only during drafting of the final decree. In such circumstances, there is no quarrel over the proposition of law laid down by the Honourable Supreme Court in the above referred to decision. But the facts and circumstances of the case is different from the facts of the present case. Therefore, those decisions are not applicable to the case on hand. Therefore, this court is of the opinion that the order passed by the trial Judge in I.A.117 of 2007 is liable to be set aside.

8. In view of the foregoing discussion, the Civil Revision Petition is allowed. The order passed in I.A.No.117 of 2007 dated 25.04.2013 by the District Munsif cum Judicial Magistrate, Uthiramerur, is set aside. However, the 1st respondent is at liberty to file a separate application seeking the relief, if so advised and if such application is filed, the trial court is directed to consider and dispose of the application, in accordance with law. No costs.

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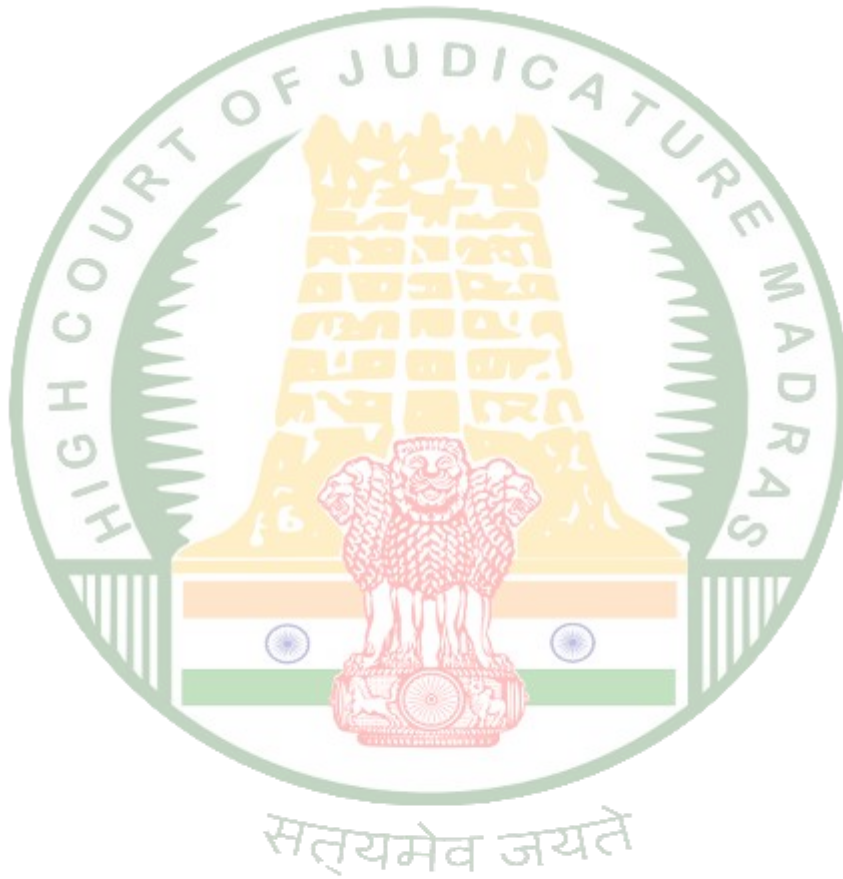
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Index: Yes/No
Speaking/Non Speaking
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To

1.The District Munsif cum Judicial Magistrate Court, Uthiramerur.

2.The Section Officer, V.R. Section, High Court, Madras



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P.VELMURUGAN,J.

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