

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P(PD).No.3425 of 2013

Saraswathi

..Appellant

Vs.

1.Venkatayammal
2.Subbayammal
3.Thulasiammal
4.Sampoornam
5.Valliammal
6.Pappathi
7.Nallasamy
8.Pappathi

..Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Final order dated 12.07.2013 passed in I.A.No.262 of 2013 in O.S.No.15 of 2011 on the file of 2nd Additional Sub Court, Erode.

For Appellants :

Mr.A.Sundaravadhanan

For Respondents :

Mr.J.Prithivi

For Mr.S.Kaithamalaikumaran

ORDER

The Fair and Final order dated 12.07.2013 passed in I.A.No.262 of 2013 in O.S.No.15 of 2011 is sought to be set aside in the present Civil Revision Petition.

2. The suit was instituted by the petitioner for Partition. During the pendency of the suit, the plaintiff found that there was some mistake in the cause of action clause in the plaint. Taking undue advantage of the said mistake, the defendants filed an application to reject the plaint. Thus, the plaintiff was forced to file an Interlocutory Application to correct the mistakes in I.A.No.262 of 2013. The plaint cause of action at Paragraph 12 reads as under:

“12.Cause of action for the suit arose in the beginning of the year 2008 when the plaintiff demanded for an amicable partition, on 10.09.2008 when the plaintiff made final demand of partition, on 10.01.2008 when the 1st defendant executed a sale deed in favour of the 2nd defendant on 29.05.2008 when the 1st defendant executed a sale deed in favour of the 3rd defendant, on the dates when the defendants failed to agree for an amicable partition, all at Palakarai village, Perundurai taluk, Erode District within the jurisdiction of this Hon'ble Court.”

3. The particulars of amendment sought for in a petition filed

under Order 6 Rule 17 reads as under:

Particulars of amendments

1.Delete para 12 of the plaint and substitute there

“12.Cause of for the suit arose on the dates when the plaintiff orally demanded for partition of the suit properties, on 01.11.2010 when the plaintiff issued lawyer notice through her counsel demanding for partition, on 9.11.2010 when the 7th defendant issued reply notice with very many false allegations, on the dates when the defendants failed to come-forward for amicable partition all at Nanjanapuram village, Kathirampatti village, Erode taluk and Kanjikoil village, Perundurai taluk within the jurisdiction of this Hon'ble Court”

4. Perusal of both the paragraphs, this Court is of an opinion that such mistakes if at all happens, parties must be provided with an opportunity to correct the same, so as to decide the suit on merits and in accordance with law. The Trial Court has not furnished a convincing reason for the purpose of rejecting the Interlocutory Application filed by the petitioner for amending the plaint. The reason stated is that the

Interlocutory Application for amendment is filed after filing of the petition to reject the plaint. If at all, the petition to reject the plaint is filed, taking undue advantage of the mistakes found out in the plaint, the plaintiff must be provided with an opportunity to correct the same, so as to adjudicate the matter on merits and in accordance with law. Based on such technical grounds, if the suits are dismissed, the rights of the parties would be prejudiced.

5. All suits are to be decided on merits and by affording opportunity to the parties concerned. If at all, the some mistakes occurred in the plaint or written statement, the parties must be provided an opportunity to correct the same. Contrarily, such mistake cannot be taken undue advantage by any of the parties to the litigation.

6. This being the principles to be followed, the reason stated by the trial Court that the Interlocutory Application to amend the plaint was filed after filing of the application by the defendants to reject the plaint and therefore, the petition stands dismissed. Such a reason is untenable and therefore, this Court is of an opinion that the petitioner must be permitted to amend the plaint as sought for in I.A.No.262 of 2013 and

the suit is to be proceeded with on merits and in accordance with law.

7. This being the factum, the Fair and Final order dated 12.07.2013 passed in I.A.No.262 of 2013 in O.S.No.15 of 2011 is set aside and C.R.P(PD).No.3425 of 2013 stands allowed. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-Speaking Order

To

1. The 2nd Additional Sub Court, Erode.

2. The Sub Assistant Registrar,

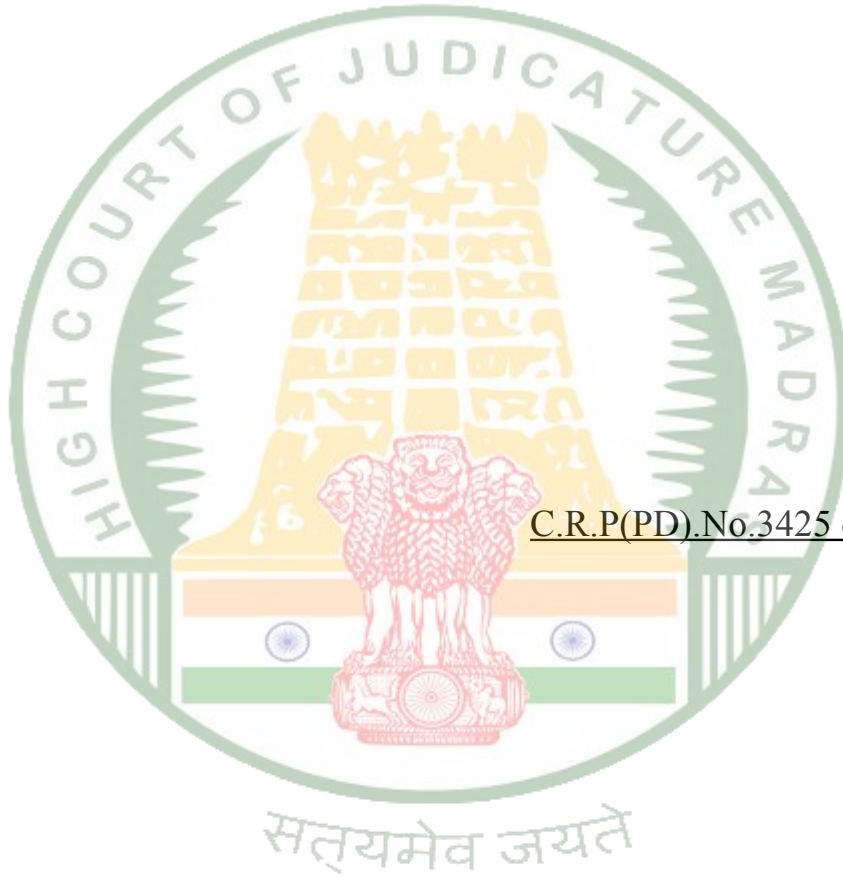
A.E.Section, High Court of Madras.

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S.M.SUBRAMANIAM, J.

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