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C.R.P.(PD).No.2411 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2411 of 2021

and

C.M.P.No.18352 of 2021

Kokila

.. Petitioner

Vs.

1.S.Kumar

2.Rajavalli

3.Baby

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 27.08.2021 in I.A.No.1 of 2021 in O.S.No.334 of 2016 (CNR No.TNSA05-000909-2016) on the file of the II Additional Sub Court, Salem.

For Petitioner : Mr.K.Selvaraj



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ORDER

The challenge in this Revision is to the order dated 27.08.2021 made in I.A.No.1 of 2021 in O.S.No.334 of 2016, an application seeking amendment of the plaint.

2. The suit is one for declaration and partition. The trial had commenced and according to the plaintiff, during the cross-examination of PW1, he came to know that Item No.3 of the suit property has not been properly described. Hence, the present application for amendment was filed seeking to amend the description of the property.

4. The same was resisted on the ground that being the post trial amendment, in the absence of any justification for delay and satisfaction of requirement of the proviso to Order VI Rule 17 of the Code of Civil Procedure, this application could not be allowed.



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5. The learned trial Judge accepted the claim of the respondents and dismissed the application. In the course of the order, an observation has been made by the learned Judge that the plaintiff has not produced any document to prove his claim.

6. I have heard Mr.K.Selvaraj, learned counsel appearing for the petitioner.

7. This again is a classic case where the affidavit filed in support of the application for amendment does not satisfy the requirements of the proviso to Order VI Rule 17 of the Code of Civil Procedure. Nowhere in the affidavit, the plaintiff has alleged as to why he could not take steps to amend the plaint at the earlier stage of litigation. No doubt in paragraph 3 of the affidavit, it is stated that wrong description came to the knowledge of the plaintiff only during the time of his evidence, the same by itself cannot constitute sufficient compliance with the requirement of Order VI Rule 17 of the Code of Civil Procedure. Being a post trial amendment, it is incumbent upon the plaintiff to atleast aver that due to certain reasons, he



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could not seek amendment earlier. No such attempt has been made. I therefore do not see any error in the order of the learned trial Judge, in order to enable me to entertain this Revision under Article 227 of the Constitution of India.

8. Hence, this Civil Revision fails and it is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

08.11.2021

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Index:No

Internet:Yes

Speaking order/ Non-Speaking order



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To

WEB COPY The II Additional Sub Judge, Salem.



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R.SUBRAMANIAN, J.

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