

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.6.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (NPD) No.3425 of 2017

and

C.M.P.No.15937 of 2017

1. Sarasu
2. Selvi
3. Chandrasekaran
4. Easwari

Petitioners

vs.

Kandasamy Gounder (Died)
Ammasi @ Muthu Gounder (Died)
Marappan (Died)
Gurusamy (Died)

1. Kunjammal
2. Nagarajan
3. Pavulraj
4. Annapoorani
5. Kunjammal @ Nallammal
6. Kesavan
7. Rani
8. Valarmathi

Vellayee (Died)
Muthusamy (Died)

9. Pappayammal

Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the Fair and Decretal order dated 3.1.2016 passed

in I.A.No.1495 of 2016 in I.A.No.374 of 2015 in O.S.No.327 of 1988 on the file of the District Munsif, Sankari.

For Petitioner : Mr.P.Valliappan

For RR 1, 2 & 9 : No appearance.

For RR 3 to 8 : Mr.N.Manokaran

ORDER

The revision has been filed against the Fair and Decretal order dated 3.1.2016 passed in I.A.No.1495 of 2016 in I.A.No.374 of 2015 in O.S.No.327 of 1988 on the file of the District Munsif, Sankari.

2. The said Interlocutory Application in I.A.No.1495 of 2016 has been filed by the petitioner/plaintiff to amend the petition in I.A.No.374 of 2015 to the following effect:-

"After the description of property add "National Highways Authority of India Ltd. acquired 4100 sq.meters of land in S.No.175/1 out of the total extent of 2.81 acres for formation of the four road. After acquisition, the Revenue Authorities subdivided the acquisition lands as 175/1A and 175/1B1 and the remaining lands in S.No.175/1 as 175/1B2 for the extent 0.72.5 Hectares i.e., suit property. The National Highways Authority

of India Limited after acquisition closed the well, Rhulaies, Uthies, Varies and the Vaikkals of the above said well and Raja Vaikkal and the pathway and the cart track situated in old S.No.175/1."

3. The Trial Court had allowed the amendment against which the present revision has been filed.

4. The crux of the submissions made by the learned counsel appearing for the petitioner is as under:-

(i) The suit in O.S.No.327 of 1988 had been filed for partition and separate possession of the suit property wherein a preliminary decree was made by the Trial Court on 28.2.1991 and after passing of the preliminary decree, the property of an extent of 4100 sq.meters in Survey No.175/1 out of the total extent of 2.81 acres of land was acquired for the formation of four road by the National Highways Authority of India. An Award was passed on 17.10.2007. Against the preliminary decree, first appeal was filed by the legal heirs of the second defendant and the it was taken on file as A.S.No.16 of 2007 on the file of the Sub Court, Sankari and ultimately, it came to be dismissed on 19.9.2013. Against the judgment and decree in the first appeal, the legal heirs of the second defendant filed Second Appeal in

S.A.No.128 of 2014 and the Second Appeal was dismissed on 4.2.2015. In the meanwhile, final decree proceedings were initiated.

(ii) The National Highways Authority of India, after the acquisition proceedings, closed the well, Rhulaies, Uthies, Varies and the Vaikkals of the above said well and Raja Vaikkal and the pathway and the cart track situated in old S.No.175/1 seven years prior to the filing of the final decree proceedings.

(iii) The plaintiffs, who were well aware of that land acquisition proceedings, failed to mention it in the petition at the time of initiating final decree proceedings. The plaintiffs have, with ulterior motive, filed the final decree petition suppressing these vital facts. Further, the revision petitioners, as early as on 11.12.2015, filed a counter denying about the particulars in the description of property and have specifically pleaded that the final decree petition is not maintainable. In spite of the specific objection made by the revision petitioners, the respondents, instead of taking steps to carry out necessary correction, proceeded with the enquiry and strangely, when the case was posted for further evidence on the side of the respondents, the respondents filed the amendment petition only on 7.10.2016 without any valid reason. The respondents were not diligent enough and they wilfully

altered the description of the property at the time of filing the final decree petition and the Trial Court, without looking into those aspects, had allowed the petition and no finding has been made with regard to lack of diligence on the part of the respondents.

5. Per contra, Mr.N.Manokaran, learned counsel appearing for the respondents/plaintiffs would submit that the revision petitioners are rustic villagers and due to lack of legal knowledge, and proper advice, and due to inadvertence, have failed to file the petition without disclosing about the acquisition of properties. He would submit that by this amendment, no prejudice would be caused to the revision petitioners and that the Trial Court, finding that by the amendment, the nature of the proceedings will not be altered and also that no prejudice will be caused to the parties, had allowed the petition. He would further submit that though there is a delay in seeking such amendment, it is not intentional or wilful and only due to lack of legal knowledge the delay had occurred and he would submit that by the amendment, no prejudice would be caused to the petitioners.

6. The learned counsel appearing for the respondents would further submit that the rules of procedures are handmaid of justice and cannot defeat the substantive rights of the parties and therefore,

plaintiffs cannot be allowed to suffer for the lack of legal knowledge and lack of legal advice. He would also submit that the civil courts are existing only for rendering justice and not for denial of justice on technical grounds and therefore, the order passed by the court below in allowing the amendment holds goods. In support of his contention, he relied upon the recent decision in **VARUN PAHWA V. RENU CHAUDHARY ((2019) 15 SCC 628)** and **JAYARAJ v. CHOCKALINGAM CHETTIAR (2015 (3) MWN (Civil 88))**.

7. The learned counsel for the respondents would further submit that there had been serious lapses on the part of the respondents/plaintiffs and therefore, the amendment cannot be allowed.

8. Heard the learned counsel appearing for the parties and perused the materials available on record.

9. The issue to be resolved is whether an amendment sought for by the plaintiffs at the stage of final decree proceedings can be permitted. The objection made on the side of the revision petitioners appear to be only a technical one viz., that it is a belated one. The indulgence sought for by the plaintiffs is on the ground of lack of legal knowledge, advice and inadvertence and they being poor rustic

villagers.

10. In a recent judgment in **VARUN PAHWA V. RENU CHAUDHARY ((2019) 15 SCC 628)**, the Hon'ble Apex Court, while dealing with the plea for amendment of plaint to rectify an inadvertent procedural mistake by advocate in describing the parties in the cause title of suit/memo of parties, has held as under:-

"... The rules of procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations."

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11. In **JAYARAJ v. CHOCKALINGAM CHETTIAR (2015 (3) MWN (Civil 88)**, wherein a Judgment Debtor sought to incorporate a

prayer for attachment and sale of the Judgment Debtor's property in the Execution Petition filed for arrest of Judgment Debtor, this court has held as under:-

"13. The Code of Civil Procedure, 1908 governs the proceedings in Civil litigations. The procedure is handmaid. The procedural provisions should assist the parties to enjoy the fruits of the Decree. The Civil Courts are existing only for rendering justice and not for denial of justice on technical grounds."

12. The amendment sought for by the plaintiff is in respect of schedule of property as a consequence of the acquisition of a portion of the suit property by the National Highways Authority of India subsequent to the preliminary decree. Such an amendment is sought for at the final decree proceedings initiated by them. The main objection raised by the revision petitioners is that though the plaintiffs were well aware of such acquisition proceedings and the award being passed seven year prior to the filing of the final decree petition, they have wilfully skipped such details while the plaintiffs claim that it is due to lack of legal knowledge and inadvertence.

13. A perusal of the order passed by the court below would show that the court below has taken into consideration the interest of justice and having observed that the suit being one for partition and separate possession and the parties of both sides have share in the suit property, had found that it would be apt if proper description of property is taken into consideration for partition and separate possession and in the event of allowing the amendment sought for, no prejudice would be caused to the defendants. Therefore, in the light of the ratio referred to above, this court is of the view that the order passed by the court below does not call for any interference.

14. Accordingly, the civil revision petition is dismissed and the order passed by the court below is confirmed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

29.6.2021.

Index: Yes/No.
Internet: Yes/No.
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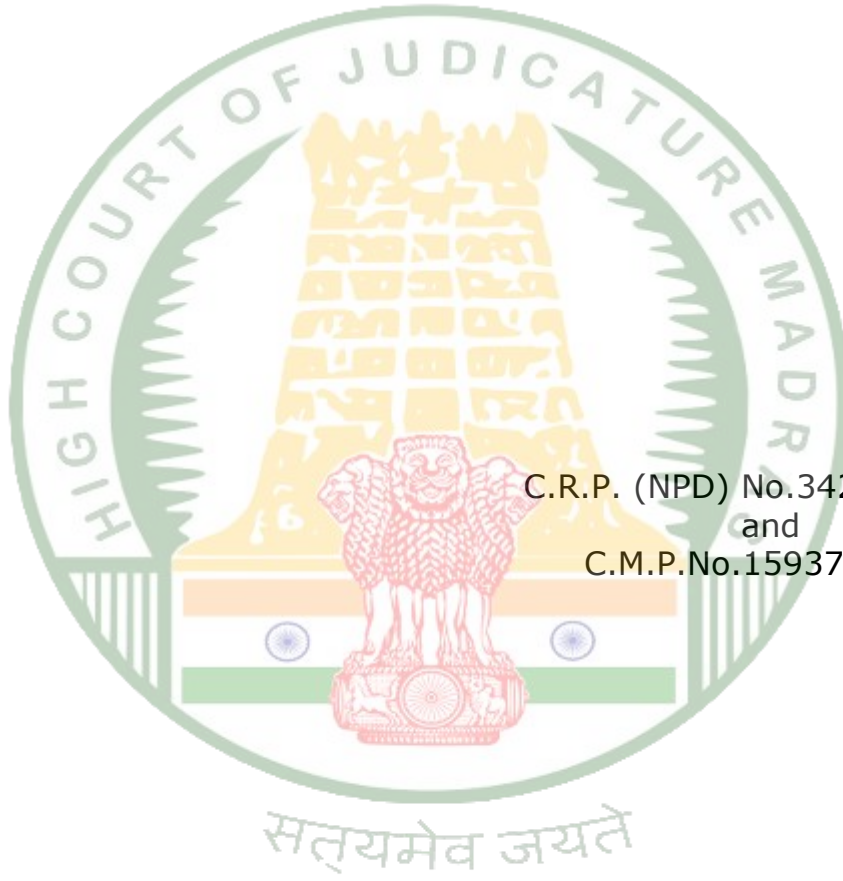
To

The District Munsif,
Sankari.

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A.D.JAGADISH CHANDIRA, J.

Ssk.



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