

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP(PD).No.989 of 2017

and

CMP.No.4877 of 2017

1. Kannammal @ Kannambal

2. Minor Thirisha

... Petitioners

Vs.

Kaliappa gounder

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 25.01.2017 made in I.A.No.556 of 2016 in O.S.No.8 of 2014 on the file of the 1st Additional District Court, Erode by allowing this Civil Revision Petition.

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For Petitioners : Mr.D.R.Arun Kumar

For Respondent : No Appearance

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.556 of 2016 in O.S.No.8 of 2014 dated 25.01.2017 on the file of the learned 1st Additional District Judge, Erode, thereby allowing the petition for amendment to amend the Survey Number.

2. The petitioners are the defendants and the respondent is the plaintiff. The respondent filed a suit for specific performance, on the strength of the agreement for sale dated 06.01.2011.

3. The case of the respondent is that the first petitioner's husband executed agreement for sale dated 06.01.2011, on receipt of a sum of Rs.9 lakhs as advance for the total sale consideration of Rs.10 lakhs for the property comprised in R.S.No.191/2 ad-measuring 4,365 sq.ft situated at Thingalur Village, Perundurai Taluk, Erode District. On the strength of the agreement for sale, the respondent filed the present suit after the death of the husband of the first petitioner herein. In the plaint, he had categorically mentioned in the schedule of the property as the property comprised in re-

survey No.191/1 situated at Thingalur Village, Perundurai Taluk, Erode District. After filing the written statement, the respondent filed a petition for amendment to amend the survey Number as 191/2 instead of 191/1 for the reason that there was a typographical error while filing the suit. The petitioners filed a written statement and denied the very agreement for sale dated 06.01.2011. They also specifically averred that the first petitioner's husband never executed any agreement for sale in respect of the suit property as alleged in the plaint. The signature found in the alleged agreement for sale is not that of one Murugan/husband of the first petitioner. Further, the description of the suit property is also not correct and the suit property does not belong to the defendants.

4. On a perusal of the agreement for sale, it is seen that the husband of the first petitioner herein entered into an alleged agreement for sale dated 06.01.2011, in which the Survey Number of the property was shown as in R.S.No.191/1. On the strength of the agreement for sale, the respondent filed the suit in respect of the very same property. After filing the written statement, the respondent filed a petition for amendment to amend the Survey Number as 191/2. The agreement for sale is only in respect of the

property comprised in 191/1 and as such, it cannot be allowed to amend the Survey Number as 191/2. In fact, the respondent caused pre-suit notice on 14.12.2013, in which he had categorically stated that the husband of the first petitioner executed agreement for sale in respect of the property comprised in R.S.No.191/1 situated at Thingalur Village, Perundurai Taluk, Erode District. ad-measuring 4,365 sq.ft. Therefore, the amendment sought for by the respondent is completely different property and it cannot be allowed to amend. However, the Court below allowed the petition only for the reason that there was a typographical error committed by the respondent while filing the suit, without verifying the legal notice dated 14.12.2013 and also the agreement for sale dated 06.01.2011. As such, the order passed by the trial Court is perverse and illegal and it is liable to set aside.

5. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.556 of 2016 in O.S.No.8 of 2014 25.01.2017 is set aside. Consequently, the connected Miscellaneous Petition is closed. No costs.

30.03.2021

kv

G.K.ILANTHIRAIYAN,J.

Kv

To

1. The 1st Additional District Judge, Erode.
2. The Section Officer,
V.R.Section, High Court of Madras.



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