



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD) .No.1146 of 2021

Karthiyayini @ Chithiral

: Petitioner/Petitioner/Appellant

Vs.

1.R.Ramasubbu

2.K.Ramasubbu

3.K.Venkatraman

4.L.Ramasubbu

5.L.Athimoolam

6.V.Krishnammal

7.V.Gomathi @ Jeyasri

8.V.Bahawathi @ Jenani

: Respondents/ Respondents/ Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to direct the I Additional District Court, Thoothukudi to number the petition in I.A.No.....of 2021 in A.S.No.1 of 2014 filed to rectify the mistake in the decree on the basis of the amended appeal memorandum and amended plaint within a time frame fixed by this Court.

For petitioner : Mr. H. Arumugam

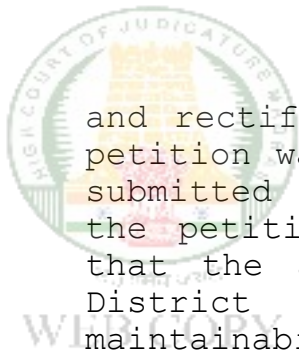
O R D E R

The Civil Revision Petition has been filed seeking orders to direct the I Additional District Court, Thoothukudi to take the un numbered petition in I.A.No... 2021 in A.S.No.1 of 2014 filed to rectify the mistake in the decree on the basis of the Amended Appeal Memorandum and Amended Plaint, on file within a time frame fixed by this Court.

2.The revision petitioner is the appellant and he filed the appeal challenging the Judgment and Decree passed by the Principal Subordinate Court, dated 30.09.2013 made in O.S.No.34 of 2008.

3.During the pendency of the appeal, the appellant filed an application in I.A.No.21 of 2015 to amend the schedule of properties and the same was allowed on 21.09.2016. It is further evident that consequentially Amended Appeal Memorandum and Amended Plaint were filed and thereafter, the appeal was disposed of, vide Judgment and Decree dated 19.04.2017.

4.The learned counsel for the revision petitioner / appellant would submit that the appellant has filed an execution petition and the same was returned on the ground that description of the property shown in the decree differs from the plaint as well as the amended plaint and appeal memorandum, that therefore, the petitioner / appellant was constrained to file an application to amend the decree



and rectify the mistake before the trial Court and that the said petition was returned stating that the entire records were already submitted to the District Court for appeal and directed to submit the petition before the Appellate Court. He would further submit that the appellant has filed the petition before the Additional District Court and the same was returned questioning the maintainability and that the same was represented again, but the petition was kept pending without numbering. The learned counsel would further submit that though the petition was filed as early as on 10.02.2020, the same was not taken on file so far.

5.It is evident from the records that the Appellate Court has permitted to amend the plaint and the appeal memorandum and that the same were incorporated in the appeal memorandum as well in the plaint. As rightly contended by the learned counsel for the revision petitioner, the non-mentioning of the amended schedule of property in the Appellate Court decree is a mistake committed by the trial Court while drafting the decree. When the mistake committed by the Court is pointed out, the concerned Court is duty bound to rectify the defect / mistake suo motu or on getting a memo from the party, complaining such mistake. In the case on hand, the revision petitioner has filed a petition under Section 152 CPC for amending the Appellate Court decree by rectification of the defects pointed out, the Appellate Court has returned the petition raising a query as to how the petition is maintainable to amend the lower Court decree and that even after representing the said petition clarifying that the appeal decree alone to be amended, the Appellate Court, without numbering the case, is keeping the petition pending. This Court is at loss to understand as as to why the said petition, filed to rectify the mistake of the Courts, is kept pending, without taking the same, on file nor passing any orders thereon.

6.Considering the above, appellate Court is to be directed to take the petition on file if it is otherwise in order and to dispose of the same, within a week from the date of receipt of a copy of this order, in accordance with law.

7.In the result, the Civil Revision revision is allowed and the learned I Additional District Judge, Tuticorin is directed to take the petition on file, if it is otherwise in order, and to dispose of the same within a week from the date of receipt of a copy of this order, in accordance with law. . No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1.The I Additional District Court,
Thoothukudi.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-27267[F] dated 25/08/2021)

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RS (02.09.2021) 3P 3C