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*C.M.P.No.14600 of 2022
in S.A.No.477 of 2014*

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KRISHNAN RAMASAMY, J.,

This petition has been filed by the petitioner/appellant seeking to carryout the amendment of the plaint schedule by substituting “entire I Floor” instead of “to an extent of 100 sq feet” both in the plaint as well as the Judgment and Decree dated 20.10.2021 made in S.A.No.477 of 2014.

2.The case of the petitioner/appellant is that she is the true and absolute owner of the property bearing Old No.21, New No.58, Puram Prakasa Rao Road, Balaji Nagar, Royapettah, Chennai – 600 014 and the same was inherited by her from her father under a settlement deed dated 31.10.2003 registered as Document No.2903 of 2003 at SRO Mylapore, Chennai. The first respondent who is the sister of the petitioner sought permission to occupy a portion of the property and the



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same was accorded by the petitioner, wherein the respondents continuously caused harassment and nuisance due to which the petitioner called upon the respondents to vacate and deliver the vacant possession of the property within a period of three days from the date of receipt of that notice. Since, they failed to do so, the petitioner filed O.S.No.597 of 2006 on the file of the City Civil Court, Chennai and the same was dismissed on 17.09.2010. Against which, appeal in A.S.No.466 of 2011 was preferred by the petitioner before the V Additional Judge, City Civil Court, Chennai, which was also came to be dismissed. Aggrieved over the same, the Second Appeal in S.A.No.477 of 2014 was preferred before this Court, which came to be decreed on 20.10.2021.

3.The learned counsel appearing for the petitioner would submit that when the petitioner taken steps to execute the decree, he came to know that by oversight a typographical error has occurred in the schedule mentioned property. An extent of the schedule mentioned



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property was mentioned as 100 sq.ft instead of entire extent of first floor consisting of 1000 sq.ft and prayed to allow the present petition.

4.Per contra, the learned counsel appearing for the respondent opposed for allowing the present application stating that the effect of the relief sought for in the above application is tantamount to obtaining a declaratory relief without a prayer and without a trial. The amendment of plaint sought does not account for the additional Court fee payable and the present petition is barred by Order II Rule 2 CPC.,

5.Heard the learned counsel appearing for the petitioner as well as the respondents and perused the materials available on record.

6.According to the petitioner, an inadvertent error had occurred in the schedule mentioned property and therefore, the same was reflected in the judgment and decree passed by this Court dated 20.10.2021. Though, it has been clearly stated in the plaint that the schedule



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mentioned property consisting of three room, kitchen and a hall on the first floor of the premises bearing Old No.21, New No.58, Puram Prakasa Rao Road, Balaji Nagar, Royapettah, Chennai – 600 014, however, the extent of the property was inadvertently mentioned as 100 sq.ft. Further, the suit property was valued for 1000 sq.ft by referring the settlement deed for the purpose of the payment Court fee. In Paragraph No.12 of the plaint it is stated as follows:

“The plaintiff values the suit relief for the purpose of Court fee and jurisdiction at Rs.10,000/- being the value given in the settlement deed in favour of the plaintiff and pays a Court Fee of Rs.750/- under Section 30 of the Court fee and Suit Valuation Act.”

7.A perusal of the above it is clear that the suit was filed for the entire extent of first floor but in the schedule it was wrongly mentioned as 100 sq.ft instead of extent of first floor consisting of 1000 sq.ft.



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Therefore, this Court is of the view that the error was occurred inadvertently as the suit was filed not for 100 sq.ft alone but for the entire first floor for which the Court fee was also paid by the petitioner. Hence, the objection raised by the respondent is un-sustainable. Further, a bar under Order II Rule 2 of CPC would not apply for the present case since the suit was filed for entire extent of first floor, thus the question of relief for declaration does not arise since it is only an error to be rectified in the schedule.

8.It is well settled that the Court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. In fact, all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. It is always open to the court to allow an



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amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation.

9.In the present case, by virtue of amendment, the petitioner wants to set right the extent of the suit property which was wrongly mentioned as 100 sq.ft. instead of entire first floor, which would certainly not alter the suit or change the cause of action and would not cause any prejudice to the respondents as this suit was laid for entire extent of first floor. From a conjoint reading of the valuation paragraph of the plaint, prayer and the plaint schedule, it is clear that the suit filed for entire 1st floor to deliver the entire portion of the 1st floor and the relief also sought in the same way. Hence, this Court is inclined to allow this petition.

10.Accordingly, the present Civil Miscellaneous Petition is allowed. The Registry is directed to carryout the amendment in the plaint and plaint schedule and issue fresh copy of judgment and decree within a period of two weeks from the date of receipt of a copy of this



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order. In the event, the records are not available with the Registry of this Court, the Court below where the records available is directed to carryout the amendment in the plaint and plaint schedule within a period of two weeks from the date of receipt of a copy of this order.

14.11.2022

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KRISHNAN RAMASAMY, J.,

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