



C.R.P.No.3403 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3403 of 2022

and C.M.P.Nos.18102 and 18104 of 2022

1. R.Senthamizhselvi
2. R.Senthamarai Kannan
3. R.Kanchana
4. R.Rathi
5. R.Rajesh Kannan

... Petitioners

Vs.

1. K.Padmavathi
2. E.Chitra
3. K.Jeevalakshmi
4. K.Dhanasekaran
(rep.by mother as Power Agent,
first respondent herein)
5. K.Hemalatha
6. E.Periyamayagi
7. E.Susila
8. K.Poongavanam
9. M.Govindammal
10. K.Kanniyappan
11. K.Kamalakannan
12. M.Sivagami Ammal
13. R.Poongothai
14. D.Sampath
15. A.Allimuthu
16. S.Sumathi
17. G.Duraikannu
18. S.Elumalai



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19. V.Sumathi
20. E.Durairajan
21. E.Vijayakumar
22. R.Poonguzhali
23. E.Thirumaran
24. S.Nirmala

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the Fair and Decretal Order 12.08.2022 passed in I.A.No.1 of 2021 in O.S.No.5 of 2009 on the file of the Hon'ble Ist Additional District Judge, Tindivanam.

For Petitioners : Mr.M.Arumugam

For Respondents 1 to 5 : Mr.D.Ravichander

For Respondents 6 to 24: No Appearance

ORDER

This Civil Revision Petition has been filed challenging the order passed by the Court below dismissing the petition for amendment filed by the revision petitioner/plaintiff.

2. The petitioners filed a suit for partition against the respondents. The petitioner also prayed for a declaration that sale transaction entered into by respondents 1 to 5/ Defendants 1 to 5 dated 16.06.2000, 04.05.2001, 05.11.2001,



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02.09.2002 and 22.10.2003 are all null and void. The trial in the matter was already over. The suit was posted for arguments on 06.12.2021. When the matter is in part heard stage, the petitioners herein has come up with this amendment petition seeking amendment of description of Item 2 to Item 7 in the suit schedule property. By way of this amendment the petitioners want to delete all the four boundaries of item 2 to item 7 and addition of word 1/4th share in the description of the property. In the affidavit filed in support of the petition for amendment, the petitioner have not stated any reason for filing amendment petition at the stage of arguments. The Court below by relying on proviso of Order 6 Rule 17 dismissed the amendment application by stating that revision petitioners failed to satisfy the Court with regard to the fact that in-spite of exercise of due diligence, they were prevented from filing amendment petition before commencement of the trial.

3. A reading of proviso of Order 6 Rule 17 would make it clear that petition for amendment can be entertained by the Court after commencement of the trial, only if it is satisfied that the party applying for amendment, in-spite of exercise of due diligence was prevented from filing amendment petition before commencement of trial. In the case on hand revision petitioners, in their affidavit filed in support of petition for amendment have not stated any reason for the failure



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to seek amendment of the description of the property before commencement of the trial.

4. A mere look at the amendment sought for by the petitioners would suggest that by amendment the petitioners wants to delete the four boundaries of item 2 to item 7 in the suit properties. In a case concerning immovable property, in order to correctly identify the property, four boundaries of the property are absolutely required. Unfortunately in this case the petitioner who had chosen to give four boundaries in the original plaint, by way of this amendment wants to delete four boundaries. If this amendment application is allowed, certainly, it will create ambiguity in the description of the property. Therefore, amendment is not at all necessary to decide the lis in a satisfactory manner. On this ground also petitioners are not entitled to succeed. Finding no infirmity in the order passed by the Court below, this Civil Revision Petition is dismissed. No costs. Consequently connected Civil Miscellaneous Petitions are closed.

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Index: Yes/ No
Speaking Order / Non-Speaking Order
jai



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To
The First Additional District Judge,
Tindivanam.



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S.SOUNTHAR, J.

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