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CRP.No.1576 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2022

PRONOUNCED ON : 19.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.1576 of 2017
and CMP.No.7375 of 2017
and CMP.No.16362 of 2018

A.Venkatachalam (died) ... 1st respondent/1st defendant.

V.Sekar ... Petitioner/4th respondent
/L.R. Of 1st defendant.
Vs.

Rajammal (died)
Kanagammal (died)
Selvam (died) .. Respondents
/Petitioners 1 to 3 /Plaintiffs

Kandayee @ Ponnu (died) ..Respondent
/7th respondent/3rd defendant.

1.Raman
2.Govindan
3.Lavanya
4.Ramya
5.Dharani
6.Vikram ..Respondents 1 to 6/Plaintiffs
7.Pauvnammal (died)
8.Jayaraman (died)



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- 9.Mohanagandhi
- 10.Pushpalatha
- 11.Mallika
- 12.Chitra
- 13.V.Sampath Kumar
- 14.V.Sukumar
- 15.V.Ravikumar
- 16.A.Manickam
- 17.Kandamani
- 18.Sivagami
- 19.Ramesh
- 20.Prabu

..Respondents 7 to 20
/LRs of the deceased 1st
defendant.

[R 18 to 20 impleaded as Party respondents vide order
dated 19.03.2019 made in CMP.No.6978/2019.]

21. J.Sathish Kanna
- 22.B.Punitha
- 23.S.Arunkumar
- 24.S.Ramya

[R21 to R24 brought on record vide order dated 14/03.2021]

..Respondents.

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the order dated 10.03.2017 in I.A.No.63
of 2016 in O.S.No.67 of 2004 on the file of District Munsif Court,
Mettur.

For Petitioners : Mr.P.Mani

For Respondents : Mr.K.Ravi Anantha Padmanabhan
for R1 to R6, R9 to R.12, R.21 and R.22



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Mr.K.V.Sundarrajan for R13
Mr.V.Murali for R18 to R.20, R23 and R.24
R 15 – No appearance
Respondents 7, 8, 16, 14 and 17 – died.

ORDER

This civil revision petition is filed by the 1st defendant as against the order passed in I.A.No.538 of 2016 in I.A.No.274 of 2012 in O.S.No.27 of 1989 on the file of Sub Court, Dharmapuri.

2. The Plaintiffs Rajammal and Kanagammal (deceased) filed suit in O.S.No.7 of 1989. In the said suit, preliminary decree was passed on 19.07.1999. The 1st defendant filed A.S.No.747 of 1990. The said Appeal suit was dismissed by this court conforming the preliminary decree. Admittedly, no appeal has been preferred as against the order passed by this court. Subsequently, the LRs of the plaintiffs filed I.A.No.60 of 2010 on the file of Sub Court, Harur for passing final decree. The said application was allowed and commissioner was appointed for effecting partition on 15.03.2011. Subsequently, the said I.A.No.60 of 2010 was transferred to Sub Court, Dharmapuri and renumbered as I.A.No.274 of 2012.



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3. Subsequently, after lapse of 5 years, the respondents 1 to 12, the LRs of the plaintiffs filed the application I.A.No.538 of 2016 to amend the survey number, extent and boundaries of the 2nd item of the suit properties and to delete the 3rd item of the suit properties in the final decree application I.A.No.274 of 2004.

4. The revision petitioner and other LRs of the defendants resisted the said I.A.No.538 of 2016.

5. The learned Judge, allowed the said application for amendment of the final decree application on 06.09.2016. Against which, the present civil revision petition is filed.

6. The ground on which the present revision petition has been filed is that the a final decree application cannot be amended without amending the plaint and the preliminary decree. Further, amendment of the final decree cannot be decided by the trial court. Therefore, plaintiffs are not entitled to seek for an amendment of the final decree application on the ground that the Schedule, which are available for



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partition is only now a lesser extent.

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7. On the other hand, the learned counsel for the respondents/plaintiffs would submit that suit properties were identified and measured by the surveyor with the VAO in the presence of advocate commissioner and found that the extent and the boundary of Item No.2 in the suit schedule S.No.153 was sub-divided into 153/3B and instead of 0.75 cents, it measured only 0.59 cents and to delete Item No.3 as it belonged to a 3rd party one Mariappan. Therefore, for amendment of the final decree, application in I.A.No.538 of 2016 has been filed and the same has been allowed by the learned Judge.

8. It is further submitted that at the time of disposal of the Appeal suit, this court permitted the defendants to mark Exhibits 90 to 92 as additional documents. CMP.No.12999 of 2001 was filed by the first defendant to mark additional documents viz., (1) Proceedings of Tahsildar dated 14.12.2020 (2) Chitta Extract for various pattas granted to defendants and (3) Adangal Extract for various Fasli Years. According to the learned counsel for the respondents/plaintiffs, the



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adangal and chitta extracts would confirm that the item Number 2 of the suit property was changed from S.No.154 to 154/3B with his name and by an order dated 28.08.2008 while dismissing the above A.S.No.747/1990 the learned Judge allowed the defendant to file additional documents. Therefore, as per the order of the learned Judge, additional documents have been filed and in such circumstances, the order passed in I.A.No.538 of 2016 need not be interfered with.

9. Heard both sides and perused the records carefully.

10. It is the foremost contention on the side of the defendant/revision petitioner as against the amendment in the final decree application is that in the factual matrix of the case, the plaintiffs are not entitled to seek for an amendment of the final decree application on the ground that the Schedule, which are available for partition is only now a lesser extent. In support of his submission, the learned counsel for the Revision Petitioner relied on the decision of this court in CRP.No.3703 of 2013 dated 27.08.2020 [***1.Devarajan and others Vs. 1.C.P.Mythili and others***]. The learned counsel pointed out this court held that amending the final decree alone is not correct and the trial



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court firstly amend the plaint schedule properties as well as preliminary decree and thereafter only final decree to be amended.

11. It is pointed out by the learned counsel for the respondents/plaintiffs that this court allowed the defendants to file additional documents on their side and so on the basis of the said additional documents, amendment application has been filed. Therefore, the court below allowed the amendment.

12. It is not in dispute that against the preliminary decree dated 19.07.1989 in O.S.No.27 of 1989, appeal in A.S.No.747 of 1990 was preferred before this court and this court after hearing both sides, dismissed the appeal by a judgment dated 28.08.2008. Therefore, the preliminary decree dated 19.07.1989 has got merged with the judgment and decree dated 28.08.2008 of this court in A.S.No.747 of 1990. But it is pertinent to note that while passing orders in the appeal, this court has taken into consideration the additional documents Ex.B.90 and Ex.B.92 viz., Chitta and Adangal Extracts. These documents would show that only lesser extent of property was available for partition.



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13. A perusal of the Ruling of this court cited by the learned counsel for the revision petitioner/defendant in the case of CRP.No.3703 of 2013 dated 27.08.2020 [***1.Devarajan and others Vs. 1.C.P.Mythili and others***] would leave no doubt in the mind of the court that the trial Judge should have examined and conducted enquiry through Advocate Commissioner and revenue officers by perusing revenue records as well as documents and after that, the trial Judge can permit the parties to amend the plaint schedule, the preliminary decree as well as final decree. In the case on hand, there is no material to show that the trial court verified the records in the manner known to law and the correlation certificates for the survey numbers of the suit mentioned properties from the revenue authority. Therefore, without amending the plaint and preliminary decree, final decree alone cannot be amended. In such circumstances, the decision cited by the revision petitioner/defendant is squarely applicable to the case on hand. Therefore, this court is of the opinion that the order passed in I.A.No.538 of 2016 in I.A.No.274 of 2012 dated 06.09.2016 in O.S.No.27 of 1989 is liable to be set aside. Further, this court is of the



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view that a reasonable opportunity is to be afforded to the defendant to put forth his contentions as regards the amendment. In such circumstances, a denovo consideration to the issue raised in I.A.No.538 of 2016 is absolutely necessary. In such view of the matter, the matter is remanded back to the court below.

14. In the result, this civil revision petition is disposed of in the following terms:-

(i) The order passed in I.A.No.538 of 2016 dated 06.09.2016 is set aside and remanded back to the court below for considering the matter afresh and to pass orders.

(ii) The learned Judge is directed to give opportunity to both sides to put forth their contentions and to follow the provisions of Sections 151 to 153-A CPC and pass orders afresh on merits. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Final decree shall be passed



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within a period of two months thereafter.

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No costs. Consequently, connected miscellaneous petitions are closed.

19.10.2022

Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

nvsri

To

1.The learned District Munsif, Mettur.

2.The Section Officer, V.R.Section, High Court of Madras.



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J.NISHA BANU, J.

nvsri/pm

PRE-DELIVERY ORDER
IN
C.R.P.No.1576 of 2017

19.10.2022



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C.R.P.No.1576 of 2017

and

C.M.P.No. 7375 of 2017 and C.M.P.No.16362 of 2018

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J. NISHA BANU, J.

Today, the matter is listed under the caption 'for being mentioned'.

2. Learned counsel for the petitioner would state that there is typographical errors in the order dated 19.10.2022. He would state that the date of preliminary decree and the I.A. number has been wrongly mentioned in paragraph Nos.2 and 3 and in paragraph No.7, the survey numbers have been wrongly mentioned as S.No.153 instead of S.No.154.

3. Therefore, paragraph Nos.2, 3 & 7 of the order dated 19.10.2022 are deleted and substituted as follows:

2. The Plaintiffs Rajammal and Kanagammal (deceased) filed suit in O.S.No.27 of 1989. In the said suit, preliminary decree was passed on 19.07.1989. The 1st defendant filed A.S.No.747 of 1990. The said Appeal suit was dismissed by this court conforming the preliminary decree. Admittedly, no appeal has been preferred as against the order passed by this court. Subsequently, the LRs of the



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plaintiffs filed I.A.No.60 of 2010 on the file of Sub Court, Harur for passing final decree. The said application was allowed and commissioner was appointed for effecting partition on 15.03.2011. Subsequently, the said I.A.No.60 of 2010 was transferred to Sub Court, Dharmapuri and renumbered as I.A.No.274 of 2012.

3. Subsequently, after lapse of 5 years, the respondents 1 to 12, the LRs of the plaintiffs filed the application I.A.No.538 of 2016 to amend the survey number, extent and boundaries of the 2nd item of the suit properties and to delete the 3rd item of the suit properties in the final decree application I.A.No.274 of 2012.

...

...

7. On the other hand, the learned counsel for the respondents/plaintiffs would submit that suit properties were identified and measured by the surveyor with the VAO in the presence of advocate commissioner and found that the extent and the boundary of Item No.2 in the suit schedule S.No.154 was sub-divided into 154/3B and instead of 0.75 cents, it measured only 0.59 cents and to delete Item No.3 as it belonged to a 3rd party one Mariappan. Therefore, for amendment of the final decree, application in



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I.A.No.538 of 2016 has been filed and the same has been
WEB COPY *allowed by the learned Judge.*

Registry is directed to make necessary correction in the order
dated 19.10.2022 and issue fresh order copy.

25.11.2022

vsi



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vsi

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and

C.M.P.No. 7375 of 2017

and

C.M.P.No.16362 of 2018

25.11.2022