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CRP.No.2569 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 2569 of 2017

and

C.M.P. No.12274 of 2017

Thanammal
Petitioner

..

Versus

Andi Gounder
..Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.06.2016 made in I.A. No.157 of 2014 in I.A.No.176 of 2010 in O.S. No.26 of 2005 on the file of the learned Sub-Judge, Cheyyar.

For Petitioner : Mr. S. Prabhu

For Respondent : No Appearance



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ORDER

This Civil Revision Petition has been filed by the petitioner seeking to set aside the fair and decreetal order dated 07.06.2016 made in I.A. No.157 of 2014 in I.A.No.176 of 2010 in O.S. No.26 of 2005 on the file of the learned Sub-Judge, Cheyyar.

2. The petitioner herein is the plaintiff and the respondent herein is the defendant in the original suit.

3. The petitioner /plaintiff filed a suit in O.S.No.26 of 2005 before the Sub-Ordinate Judge, Cheyyar, seeking for partition and separate possession in the suit schedule property . The Trial Court partly allowed after considering oral and documentary evidence, by Judgment and Decree dated 24.03.2008 as the plaintiff/petitioner herein is entitled to 1/4th share in the suit properties and decreed the suit as prayed for. Being Aggrieved by the aforesaid Judgment and decree, the Defendants preferred the First Appeal in A.S. No.15 of 2008 on the file of the District Judge, Tiruvannamalai. After hearing both sides, the First Appellate Court dismissed the same and upheld



the Judgment and Decree passed by the Trial Court by Judgment dated 29.04.2009. Being not satisfied with the aforesaid Judgment passed by the First Appellate Court, the Defendant has filed the Second Appeal in S.A. No.1612 of 2010 before this Court seeking to set aside the aforesaid Judgment. After hearing both sides, this Court partly allowed the second appeal by Judgment dated 20.09.2011 holding that the respondent/plaintiff is not entitled to claim any share in the first item of ancestral property and so far as the second item of the property is concerned, the plaintiff is entitled 1/4th share in the suit property as held by Courts below. Subsequently, the plaintiff has filed final decree petition in I.A.No.176 of 2010 before the Trial Court. Thereafter, the plaintiff has filed I.A. No.157 of 2017 in 176 of 2010 in O.S. No.26 of 2005 under Order 6 Rule 17 of C.P.C. seeking to amend the boundaries and survey number of the suit schedule of Property in the final decree petition. The Trial Court dismissed the I.A. No.157 of 2014 holding the reason that the petitioner never mentioned after due diligent only this mistake has occurred. Being not satisfied with the aforesaid order, the plaintiff/petitioner herein has filed the present Civil Revision Petition to set aside the same.



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4.The learned counsel for the petitioner would submit that there is some correction in the boundaries and survey number with regard to item No.2 schedule property, the petitioner has filed the I.A. No.157 of 2014 to include the same in the final decree petition in which there is no dispute as to right over of the petitioner in the 2nd Item of schedule mentioned property. While this Hon'ble Court upheld that the petitioner is entitled to 1/4th share in the item No.2 property which has attained finality, the petitioner should be allowed to amend the boundaries and survey numbers related to Item No.2 of suit schedule property. The Trial Court without appreciating the aforesaid factual aspects, dismissed the aforesaid I.A while the petitioner is entitled 1/4th share in the item No.2 of the suit property. If the amendment is not carried out in the petition, the Trial Court cannot effectively pass final decree in consonance with the Judgment of High Court since the boundaries and survey numbers are wrongly mentioned in the previous petition.

5. It has been further submitted that when the necessity to amend the Item No.2 of suit property with correct particulars arose only after the



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pronouncement of the Judgment by this High Court whereas the Trial Court has erred in holding that the petitioner has never mentioned that after due diligent only this mistake occurred. Hence, seeks to set aside the order dated 07.06.2016 passed by the Sub-Court, Cheyyar.

6. The learned counsel for the respondent would submit that once the case has been taken for cognizance by the First and Second Appellate Court, now the application for amendment is unsustainable. After final decree petition, the petitioner is tactfully trying to include different extent and measurement with new boundaries to get over the mistake occurred in the boundaries and survey number which were already recorded in the petition filed by the parties. Hence, the Trial Court has rightly dismissed the aforesaid application.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent as well as perused the materials available on record.



8. On a perusal of the records, it is seen that the plaintiff filed the suit in O.S. No.26 of 2005 for partition in the Suit schedule property with regard to Item Nos.1 and 2. The boundaries and survey number in the suit schedule property were mentioned at the time of filing of the aforesaid original suit. It is admitted fact that the plaintiff was not given any share insofar as item No.1 is concerned and however the plaintiff is entitled to 1/4th share in the Item No.2 of the suit schedule property. The same was upheld by this Court in S.A. No.1612 of 2010. As the petitioner came to understand only after the case attained finality that there is some discrepancy in the boundaries and survey number in the Item No.2 of the suit schedule property, she intends to amend the schedule of property by including the survey number and boundaries in a proper manner relating to Item No.2 in the final decree petition which would not cause any hardship to the respondent and would not arise any new cause of action since 1/4th share is alone entitled to the petitioner in the Item No.2 of suit schedule property. Hence, the proper boundaries and survey numbers of the 2nd item of the suit property is necessary to include in the final decree petition, to divide the 2nd item of suit schedule property as per the decree passed by this Court. Hence, the findings of the Trial Court is hereby set aside and the



petitioner is permitted to amend the boundaries and Survey Number in the Item No.2 of suit schedule property. After this amendment, the final decree petition shall be disposed of within a period of three months from the date of receipt of copy of this order.

9. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

12.10.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No

To:

1. The learned Sub-Judge, Cheyyar.
2. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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