



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2022

CORAM

THE HON'BLE MRS.JUSTICE S.ANANTHI

C.R.P (MD)No.2066 of 2017

and

C.M.P (MD)No.10258 of 2017

P.Thanalakshmi

... Petitioner/1st Defendant

Vs.

1.Varundev

2.Mimitha

3.Ramakrishnan

... 1st & 2nd Respondents/Plaintiffs

... 3rd Respondent/2nd Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 11.07.2017 made in I.A.No.14 of 2017 in O.S.No.45 of 2015 on the file of Additional District & Sessions Court, Theni at Periyakulam, set aside the same and allow this Civil Revision Petition.

For Petitioner : Mr.S.Srinivasa Raghavan

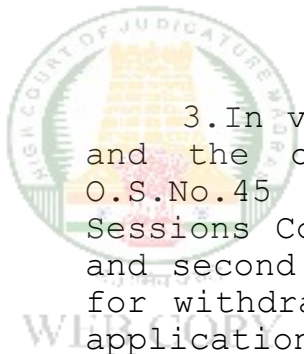
For R1 & R2 : Mr.P.Thiagarajan

For R3 : Mr.V.Janaki Ramulu

ORDER

The Civil Revision Petition has been filed to set aside the order dated 11.07.2017 made in I.A.No.14 of 2017 in O.S.No.45 of 2015 on the file of Additional District & Sessions Court, Theni at Periyakulam.

2.I.A.No.14 of 2017 was filed by the first and second respondents/plaintiffs under Order 6, Rule 17 of CPC, to amend the plaint, which was allowed by the learned Additional District and Sessions Judge, Theni at Periyakulam. The trial Court by quoting the decision of the Hon'ble Supreme Court held that if the cause of action did not change and the reliefs sought are different, the plaint has to be amended and prayer should also be amended without causing prejudice to the defendants. However, the trial Court failed to consider that the relief sought in the original plaint is for partition and separate possession is different from the relief of declaration. Because, the by amending the plaint, the plaintiffs sought the relief of declaration, which change the entire cause of action. The Hon'ble Supreme Court held that plaint can be amended without changing the cause of action. However, in the case on hand, the cause of action itself changed by amending the plaint. Hence, the order passed by the Court below warrants interference.



3.In view of the above, this Civil Revision Petition is allowed and the order dated 11.07.2017 made in I.A.No.14 of 2017 in O.S.No.45 of 2015 passed by the file of Additional District & Sessions Court, Theni at Periyakulam is hereby set aside. The first and second respondents/plaintiffs are at liberty to file a petition for withdrawal under Order 23, Rule 1. Before deciding withdrawal application the revision petitioners has to put on notice and after hearing both side, the trial Court shall decide the matter on merits. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Additional District & Sessions Judge,
Theni at Periyakulam.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-15470[F] dated 30/03/2022)

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-15615[F] dated 31/03/2022)

C.R.P (MD)No.2066 of 2017
and
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RS (01.06.2022) 2P/4C