



C.R.P. No. 751 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

**C.R.P.No. 751 of 2023
and
C.M.P.No. 5792 of 2023**

**Murugasamy,
S/o. Kangeyappa Gounder**

... Petitioner

Vs

- 1. Mrs.Kannammal,
W/o. Chinnasamy**
- 2. Mrs.Rukmani,
D/o. Ramasamy Gounder**
- 3. Mrs.Kalamani,
W/o. Palanisamy**
- 4. Mr.Kandasamy,
S/o. Karuppusamy**

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to expunge the observations made in IA.No.2 of 2022 in



C.R.P. No. 751 of 2023

O.S.No.151 of 2019 dated 17.11.2022 by the Hon'ble Subordinate Judge,
Palladam.

For Petitioner : Ms.M.Revathi

ORDER

The Revision Petitioner is the 2nd defendant in the suit and he has preferred this Civil Revision Petition to expunge the observation made in I.A.No.2 of 2022 in O.S.No.151 of 2019 dated 17.11.2022 by the learned Sub-Judge, Palladam.

2. Today, when the matter taken up for hearing, Ms.M.Revathi, learned counsel for revision petitioner argues that while disposing the application in I.A.No.2 of 2022, the trial judge made an observation that the alleged amendment was not necessary as the suit schedule contained the details of both the properties. Moreover, the trial judge also failed to take into consideration of the fact that the said proposed amendment was sought by the 1st respondent nearly 13 years later from the date of suit.



C.R.P. No. 751 of 2023

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3. Admittedly, a perusal of records would reveal that in the year of 2009, the plaintiff filed a suit for partition and the 2nd defendant alone contested the suit. The entire plaint averment refers to claim 1/4th share in the suit item Nos.1 and 2 of the properties, however, in the prayer column, she prayed division only in respect of Item No.1 of the suit schedule property. So, there is an error committed by her. Hence, she wanted to amend the said portion by deleting item No.1. So, she filed an application for amendment, and the said application was objected by the 2nd defendant stating that nearly about 13 years later, the said application was filed and it is also barred by limitation. But, the trial court without considering the entire plaint averments, made an observation that the amendment was not necessary. Furthermore, the entire plaint averment denotes that she claims 1/4th share in both item Nos.1 and 2 of the suit schedule property, but the trial court failed to take note of the said fact and the court fee also paid claiming 1/4th share in both the properties. Therefore, the trial court is inclined to conclude that she is claiming right in item Nos.1 and 2 of suit schedule properties, as such is maintainable, which needs no interference.



C.R.P. No. 751 of 2023

However, liberty is given to the Revision Petitioner to file his additional written statement, if he wants. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

31.03.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

Sub-Judge,
Palladam.



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C.R.P. No. 751 of 2023

T.V.THAMILSELVI, J.

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C.R.P.No. 751 of 2023

31.03.2023