



C.M.P.No.10914 of 2022
in S.A.No.573 of 2017

C.M.P.No.10914 of 2022
in
S.A.No.573 of 2017

S.S.SUNDAR, J

This petition is filed to amend the survey number as R.S.No.107 instead of R.S.No.167 in the decree dated 20.04.2022 made in S.A.No.573 of 2017 passed by this Court.

2. The petitioners herein (appellants) are the plaintiffs and the respondents herein are the defendants.

3. The plaintiffs have filed the suit in O.S.No.252 of 2003 on the file of the Subordinate Court, Bhavani against their own father, the first respondent herein also and the second respondent.

4. It is the case of the appellants/plaintiffs that they are entitled to 1/4 share by birth. The suit was opposed by the second defendant alone on the ground that earlier, she filed the suit for specific performance in O.S.No.23 of 1997 against the first defendant and got the sale deed executed through Court on 14.08.2003.

Page No.1/5



C.M.P.No.10914 of 2022
in S.A.No.573 of 2017

WEB COPY

5. The suit in O.S.No.252 of 2003 was dismissed by the trial Court by judgment and decree dated 24.08.2009. Aggrieved by the same, the plaintiffs preferred appeal in A.S.No.29 of 2011, which was also dismissed, against which, the present Second Appeal was filed by the plaintiffs.

6. This Court, after considering the Second Appeal on merits, allowed the Second Appeal on 20.04.2022. Only after the judgment and decree was drafted, it is the case of the appellants that they came to know about the survey number having been wrongly mentioned as R.S.No.167 instead of R.S.No.107 and thus, the decree has been drafted as if the suit property lies in R.S.No.167. Stating that the error in the decree is purely a typographical error and hence the application is filed under Section 152 C.P.C. for amendment of the survey number alone.

7. This Court has carefully gone through the papers and finds that a typographical error has crept in, in the decree alone in respect of the survey number alone.

8. Learned counsel for the second respondent has filed a Memo before

Page No.2/5



C.M.P.No.10914 of 2022
in S.A.No.573 of 2017

this Court stating that the second respondent wants to engage another Advocate in this matter and that therefore, notice may be sent to the second respondent directly. It is expressly stated by the learned counsel for the second respondent that the second respondent wishes to engage a new Advocate for appearing in this formal amendment petition and that therefore, notice may be issued to the second respondent.

9. It is seen that the second respondent (second defendant) has lost the battle, since the Second Appeal itself was allowed granting the decree for partition. This Court noticed earlier that the second defendant has earlier filed a suit for specific performance on the basis of the agreement she had with the first defendant. The petitioners herein are not parties to the said suit filed for specific performance and that therefore, the decree in the specific performance suit is not binding on them. Therefore, the second respondent appears to have instructed his counsel with the sole intention to drag on the proceedings with ulterior motive.

10. This Court is convinced with the fact that the amendment is nothing but correction of the formal typographical error that had crept in, in the decree. This Court is not inclined to grant further time or issue notice to the second



C.M.P.No.10914 of 2022
in S.A.No.573 of 2017

respondent as requested by her counsel.

WEB COPY

11. Accordingly, this amendment petition is allowed as prayed for.

12. Registry is directed to issue amended decree by carrying out the correction in survey number as directed above.

20.04.2023

CS

To

1. The IV Additional District Judge, Erode, Erode District.
2. The Subordinate Judge, Bhavani, Erode.
3. The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



C.M.P.No.10914 of 2022
in S.A.No.573 of 2017

S.S.SUNDAR, J

CS

C.M.P.No.10914 of 2022
in S.A.No.573 of 2017

20.04.2023

Page No.5/5