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C.R.P. Nos.3737 & 3738 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.3737 & 3738 of 2023

Ranganathan (died)

- 1 Arul
- 2 Naveethammal
- 3 Ravi
- 4 Usha
- 5 Minor Yogith
Rep. by his mother natural
Guardian next Friend Usha/4th Petitioner
- 6 Minor Priya
Rep. by his mother natural
Guardian next Friend Usha/4th Petitioner
- 7 Saritha
- 8 Sangeetha

... Petitioners in
both C.R.P.s

Vs

- 1 Shanmugam
- 2 Murugesan
- 3 Kutti
- 4 Chandra
- 5 Govindaraj
- 6 Amirthammal

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Nathamuni (died)

7 Loganathan

8 Baby

9 Mani

10 Selvam

11 Elumalai

12 Natarajan

13 Munusami

Thakkali Reddy (died)

Annammal (died)

Rajammal (died)

14 Ramakrishnan

15 Baskaran

16 Murthy

17 Palani

Valli Ammal (died)

18 Seetharaman

19 Devaki

20 Minor Madhumitha

Rep. by her mother and natural
guardian Devaki

21 Hari

22 Nalini

23 Srinivasan

24 Thangammal

25 Mohan

26 Raani

... Respondents in
both C.R.P.s



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PRAYER in C.R.P.No. 3737 of 2023 : Civil Revision Petition is filed under Art.227 of Constitution of India, praying to set aside the order and decree dated 06.04.2023 made in I.A.No. 172 of 2019 in O.S.No.06 of 2008, on the file of District Munsif, Arakkonam, Vellore District.

PRAYER in C.R.P.No. 3738 of 2023 : Civil Revision Petition is filed under Art.227 of Constitution of India, praying to set aside the order and decree dated 06.04.2023 made in I.A.No. 171 of 2019 in O.S.No.06 of 2008, on the file of District Munsif, Arakkonam, Vellore District.

For Petitioners in
both C.R.P.s : Mr.A.Gouthaman

COMMON ORDER

Challenging the impugned orders passed in I.A.Nos.171 & 172 of 2019 in O.S.No. 06 of 2008 on the file of learned District Munsif, Arakkonam, Vellore District, the revision petitioners/plaintiffs preferred these Civil Revision Petitions.



2. Since the relief claimed challenging the impugned orders passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioners filed two Interlocutory Applications, in which I.A.No.171 of 2019 was filed seeking to amend the preliminary decree and another application in I.A.No.172 of 2019 was filed seeking to amend schedule property of plaint. The reasons assigned by the Revision Petitioners is that the 2nd petitioner and his father Ranganathan filed a suit for partition of the plaint schedule properties. In that suit, a preliminary decree was passed on 19.11.2009. In pursuance of the preliminary decree, the 2nd petitioner and other legal heirs of 2nd petitioner's father, the 1st plaintiff in the suit and legal heirs of Prabakaran, the brother of 2nd petitioner, who is another son of Ranganathan have filed an application under Order 26 Rule 13 of C.P.C. in I.A.No.26 of 2011 for passing a final decree in the suit and a commissioner was also appointed. At that time, the Revision Petitioners came to know that the earlier counsel inadvertently not properly described the schedule with regard to inclusion of item Nos.2 and 3 of the properties in plaint A schedule. So, the necessity arose for the plaintiffs to amend the description of property in respect of



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share allotted to the parties, so also, in the preliminary decree. To that effect, the plaintiffs stated that Pachaiyappa reddy purchased the property from the daughter of Dhanammal. Therefore, the respondents would have claimed 1/9th share in the property, inspite of that, they are claiming half share in the 'B' schedule property, however they would have claimed 1/9th share. To that effect, they wanted to amend the preliminary decree as well as final decree. Before the trial court, the respondents have appeared and subsequently they were remained expare. The trial judge dismissed the applications “holding that Sec.152 of C.P.C. provides correction of clerical, arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates correction of mistakes by the court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or made is passed. So, the settled provision of law is that after passing of the judgment, decree or order, this court becomes functus officio and thus, not entitled to vary the terms of judgment and decree already passed”. Challenging the said findings, the plaintiffs have preferred these Civil Revision Petitions.



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4. The learned counsel for Revision Petitioners would submit that admittedly, the preliminary decree alone was passed and so far, the final decree was not passed. But the trial judge had erroneously concludes that after passing the preliminary decree, those applications were filed. But, before passing the final decree, they came to know about the inadvertent mistake in respect of 'B' schedule property and the same is to be corrected by way of amendment, but the same was not properly appreciated by the trial judge. Hence, he prayed to set aside the findings of trial judge.

5. Considering his submissions and on perusal of records, it reveals that the plaintiffs approached the trial court claiming share in the suit properties, thereby in the 'A' schedule property, they are claiming half share and also claimed half share in 1/9th share of the 'B' schedule property, since because after the purchase made by Pachaiyappa reddy, the share of 'B' schedule is changed. Therefore, they ought to have claimed 1/9th share. To that effect, they have produced both sale deeds, but the same was not appreciated by the trial judge. However, the claim of amendment in the



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share would not cause any prejudice to the respondents nor it would not change the character of the suit. But, without considering the same, the trial court dismissed the applications and in fact, the passing of preliminary decree is a part of the proceedings and until passing of final decree, the partition suit is alive before the trial court. Therefore, the findings rendered by the trial judge is liable to be set aside. Accordingly, these Civil Revision Petitions are allowed and the findings of the trial judge in I.A.Nos. 171 and 172 of 2019 in O.S.No. 6 of 2008 is set aside and both the applications are ordered to be allowed. No costs.

19.10.2023

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To

District Munsif,
Arakonam, Vellore Dt.



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T.V.THAMILSELVI, J.

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