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C.R.P.(PD) No.3078 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.3078 of 2019
and CMP.No.19994 of 2019

Kamala

... Petitioner

vs.

1.Prakash
2.Maheshwari
3.Rajesh
4.Geetha

... Respondents

Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 18.07.2019 made in I.A.No.01 of 2019 in A.S.No.20 of 2018 on the file of the Principal District Judge, Namakkal.

For Petitioner : Mr.T.Dhanyakumar

For Respondents: Mr.C.Thangaraju (for R1 to R3)

ORDER

O.S.No.96 of 2011 is a suit for partition. The said suit was dismissed by the trial Judge in and by way of an order dated 14.12.2017. Against the dismissal, an appeal was preferred in A.S.No.20 of 2018. The dismissal of the suit was on the ground that the survey number of the



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properties were not given in the plaint. Therefore, an application was taken out in I.A.No.1 of 2019 for the purpose of inclusion of survey numbers. The learned trial Judge dismissed the application holding that the appellate Court does not have the power to amend the plaint.

2.Heard Mr.T.Dhanyakumar, learned counsel appearing for the petitioner and Mr.C.Thangaraju, learned counsel appearing for the respondents 1 to 3.

3.The reading of the order of the learned Appellate Judge shows that he has not appreciated the provision of Order 6 Rule 17 of CPC which enables the Court to amend the plaint, even at the stage of second appeal, if the necessity so arises.

4.The case of the appellant is that the suit had been dismissed on the ground that survey numbers have not given in the plaint. The survey numbers are now being furnished. Order 6 Rule 17 of CPC is not a legal thumb screw to punish the plaintiff. It is a provision which has been included to enable a party to rectify the mistakes that have occurred in a plaint.

5.By inclusion of the survey numbers neither the frame of the suit nor the cause of action is going to change. Those are the only two aspects which the trial Judge ought to have seen at the time of disposal of the



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application. Being a suit for partition, the question of limitation also does not arise.

6.This civil revision petition is allowed and the order passed in I.A.No.1 of 2019 in A.S.No.20 of 2018 dated 18.07.2019 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2023

Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No
vs

To

The Principal District Judge,
Namakkal.



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V.LAKSHMINARAYANAN,J.

VS

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