



C.R.P.No.3933 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3933 of 2023

and

C.M.P.No.24238 of 2023

R.Samboornam

... Petitioner

-Vs-

1.Palanisamy

2.Pachiyammal

3.Sarasu @ Saraswathi

4.Selvi

5.Duraisamy

6.Ramasamy

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the decretal order dated 23.03.2023 made in I.A.No.02 of 2021 in O.S.No.59 of 2013 on the file of the Sub Court, Thiruchengode, Namakkal Dt.

For Petitioner

: Mr.R.Muruga Bharathi



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ORDER

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Challenging the impugned order passed in I.A.No.02 of 2021 in O.S.No.59 of 2013 by the learned Sub-Judge, Thiruchengode, Namakkal District, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

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

3. Before the trial court, the Revision Petitioner/Plaintiff filed a suit in O.S.No. 59 of 2013 against the defendants for the relief of partition and other consequential relief in respect of 6 items of suit property. In the suit, notice served and the defendants filed their written statement and additional written statement. As per their additional written statement, the defendants contended that the suit item No.2 in Survey No.413/4 belong to one Chinna Gounder, son of Kanthappa Gounder and Sengodan, son of Chinna Gounder as per the sale deed dated 06.11.1957. On considering the said pleadings, the plaintiff filed an application in I.A.No.2 of 2021 to amend the plaint in order to delete second item of suit property. That



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application was objected by the 1st defendant stating that after completion of evidence, he prayed to delete one of suit items, as such is not maintainable. Hence, he prayed to dismiss the said application. On considering submissions of both sides, the trial judge held that after completion of evidence, when the case is posted for defendants side evidence, the said application was filed by the plaintiff praying to amend the schedule of property, as such is not maintainable, since because if one item of property is deleted, the entire character of suit would be changed, besides the said application was filed belatedly. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that after filing of the additional written statement by the defendants on 29.08.2019, the necessity arose for him to file an application to delete second item of suit property. But, without considering his contentions, the trial judge erroneously dismissed the application. Hence, he prayed to set aside the findings of trial judge.



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5. Records perused. As per the contentions of Revision Petitioner, it reveals that second item of suit property belong to one Chinna Gounder sn of Kanthappa Gounder and Sengodan, son of Chinna Gounder as per sale deed dated 06.11.1957 and the same came to know after the filing of additional written statement by the 1st defendant. So, he wanted to delete the said item. As the plaintiff, he approached the court claiming the relief of partition in respect of 6 items of suit property and now he wanted to delete one item of suit property, more particularly, second item. If the said item is deleted, no prejudice would be caused to the respondents, since because they have only taken the defence that the said second item of property not belong to plaintiff. Furthermore, by deleting the second item of the suit property, it would not change the character of the suit. So, the findings rendered by the trial judge is unsustainable one, which needs interference. Accordingly, this Civil Revision Petition is allowed and the impugned order passed by the trial judge in I.A.No.2 of 2021 in O.S.No.59 of 2013 is set aside and the said application is ordered to be allowed. Liberty is granted to the defendants to file their further additional written statement, if any. Thereafter, the trial judge is directed to proceed with the trial as per manner known to law and dispose the case as expeditiously as



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possible. No costs. Consequently, connected Civil Miscellaneous Petition
is closed.

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Index : Yes/No

Speaking Order : Yes/No

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To

The Subordinate Judge,
Tiruchengode, Namakkal Dt.

T.V.THAMILSELVI, J.



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