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C.R.P.No.4066 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

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

C.R.P.No.4066 of 2023

Seetharam Naidu (died)

S.Janagam (died)

1. V.Subbulakshmi
2. R.Thayar

... Petitioners

-Vs-

1. K. Gajalakshmi
2. R. Latha

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 17.04.2023 passed in Unnumbered I.A.No.....of 2023 in O.S.No.12 of 2007 passed by the learned II Addl. Subordinate Judge at Cuddalore.

For Petitioner : Mr.S.Kingston Jerold



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ORDER

Challenging the impugned fair and decretal order passed in an unnumbered I.A.No..... of 2023 in O.S.No.12 of 2007 passed by the learned II Addl. Sub-Judge, Cuddalore, the Revision Petitioners/defendants 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 Petitioners filed an application to include item No.11 of the suit schedule as item No.13 in Schedule 'A' of the compromise decree, which was left out to be mentioned during the compromise arrived between the parties. So, there is a variation in respect of that item of property, which is sought to be included and already final decree was passed based on the compromise, however there is no clerical error while passing the final decree by the trial court. Therefore, the omission of property made by the parties cannot be permitted after the compromise. Accordingly, the application was dismissed as it is filed under Sec.152 of C.P.C. Aggrieved over the said findings, the Revision Petitioners/defendants preferred this Civil Revision Petition.



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4. The learned counsel for Revision Petitioners would submit that the suit was originally filed by the respondents/plaintiffs in the year of 2007 in respect of 38 items of property and thereafter a compromise was arrived between the parties in the year of 2016. At that time, Item No.11 was left out to be mentioned, which was allotted to Schedule 'A'. Therefore, the necessity arose for the revision petitioners/defendants to amend the compromise decree by including the said item. But, the trial judge held that after passing of the final decree, the parties having allowed to make any alteration or correction, they have failed to avail such opportunity, thereby it was dismissed. Hence, they prayed to set aside the findings of the trial judge.

5. Admittedly, a compromise was arrived by all the parties in respect of suit properties and there is no dispute between them to that effect. However, if opportunity is not given to Revision Petitioners/defendants, their valuable right to protect their property will be defeated. But, without giving opportunity to them, the trial judge erroneously dismissed the application, as such is erroneous one and the same is liable to be set aside.



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Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in an unnumbered I.A.No..... of 2023 in O.S.No.12 of 2007 is set aside. The trial judge is directed to take the application on file and dispose the same as per manner known to law by giving opportunity to the other side. No costs.

22.11.2023

Index : Yes/No
Speaking Order : Yes/No
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To

The II Addl. Sub-Judge, Cuddalore.



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T.V.THAMILSELVI, J.

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