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CRP No.3817 of 2018
and
C.M.P.No.17846 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.3817 of 2017
and
C.M.P.No.17846 of 2017

Rani

... Petitioner

Versus

1.Venugopal
2.Mannangati
3.Varatharaj
4.Minor Reka
5.Minor Sivaraj

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decretal order of the III Additional District Munsif Court, Kallakurichi, dated 29.04.2016, in I.A.No.576 of 2015 in O.S.No.557 of 2003.

For Petitioner : Mr.P.Valliappan

For R2 : Mr.C.M.Mohanasundaram

For R1,R3 to R5 : No appearance



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ORDER

The petitioner has filed this revision petition to set aside the fair and decretal order dated 29.04.2016, made in I.A.No.576 of 2015 in O.S.No.557 of 2003, on the file of III Additional District Munsif Court, Kallakurichi.

2. Heard, Mr. P. Valliappan, learned counsel for the petitioner and Mr. C. M. Mohanasundaram, learned Counsel for the second respondent and perused the materials available on record.

3. By challenging the impugned order passed in I.A.No.576 of 2015 in O.S.No.557 of 2003, the petitioner / plaintiff has preferred this revision petition. The plaintiff has filed the suit in O.S.No.557 of 2003 for a relief of partition and other consequential reliefs. Against the plaintiff's claim, after full trial, suit was decreed by granting 1/10th share in the suit property. Thereafter, the petitioner/plaintiff filed an application in I.A.No.2778 of 2011 in O.S.No.557 of 2003 before the learned III Additional District Munsif Court, Kallakurichi, to appoint a Commissioner to measure the suit property with the help of the Surveyor. Accordingly, Commissioner was appointed and he measured the property along with the help of the Surveyor and



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submitted the report along with the plan. After filing of the report the petitioner / plaintiff has filed a petition to amend the description of the property in I.A.No.2778 of 2011, as there is a slight variation in the extent of the property in S.No.340/2. Further, he contended that she was not aware of the correct particulars at the time of filing of suit as she is illiterate. But the said application was objected by the defendant, stating that already they have preferred an appeal in A.S.Nos.47 of 2008 & 49 of 2008 against which former appeals were filed before this Court in S.A.Nos.26 of 2011 and 27 of 2011 and the same are still pending and during the pendency of the said proceedings, now, she filed a petition to amend the description of the property as such, if is not permissible. Further, she ought to have taken steps to amend the decree much prior to the trial proceedings. If at all the proposed amendment is permitted the nature of the suit will be changed, hence he raised objection.

4. On considering, both sides submissions, the trial Court finally held that, the plaintiff ought to have submitted the correct particulars of the suit properties at the time of filing of the suit and after passing of the decree, she filed a petition to amend the description of the property based on the Commissioner's Report. During final decree proceedings such amendment is



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not permissible, accordingly the said petition was dismissed. By challenging the said findings the plaintiff has preferred this revision.

5. The learned counsel for the revision petitioner argues that the petitioner sought to amend the extent which was slightly varied when compared on the ground as per the Commissioner's Report and one of the items of the property was wrongly mentioned and to rectify the same as per the Commissioner's Report she filed the said petition, for amendment but the trial Court erroneously concluded that the proposed amendment would change the nature of the claim. The trial Court also erred in stating that the application has been belatedly filed after passing the decree. But the trial Court failed to consider the scope and ambit of Order VI and Rule 17 of Code of Civil Procedure, while dismissing the application for amendment.

6. By way of reply the learned counsel for the respondents submitted that after filing of the Commissioner's report, during the final decree proceedings, the plaintiff filed an application to amend the extent of the property as such it is not permissible and the learned trial Judge also rightly appreciated the same which needs no interference, hence he prayed to dismiss the petition as devoid of merits.



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7. Considering both sides submissions, the fact reveals that the plaintiff has filed a suit for partition, in the year 2003 and the suit was decreed by granting 1/10th share in her favour in the year of 2008. Thereafter the defendants preferred an appeal, and it is now pending before this Court as Second Appeal. In the mean, the plaintiff filed an application for passing of final decree in I.A.No.2778 of 2011, wherein a Commissioner was appointed and measured the property with the help of surveyor and VAO and submitted the report along with plan. Thereafter, the plaintiff came to know that there is a slight difference in the extent and 2nd item of the extent was wrongly mentioned. So she prayed to amend the Item Nos.1 and 2 as mentioned in the petition. It is true, that at the time of filing the present application, the said final decree applications were pending before the learned trial Judge and the Second Appeals also were pending before this Court. However, on seeing the fact that when the Commissioner measured the property with the help of the surveyor and VAO, they identified the suit properties by comparing with revenue records and noticed there was a slight variation in the extent and survey number. Therefore, after filing of the Commissioner's Report necessity arose for the plaintiff to amend the description of the suit property.



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8. Admittedly, the parties are not claiming any right in the property in entirety. The dispute between the plaintiff and the defendants is with regard to a share in the properties. In such circumstances, if plaintiff is not permitted to amend the description of the property, the value and right over the property will be defeated but the learned trial Judge, failed to take note of this fact and erroneously dismissed the case. Under Order VI Rule 17, the plaintiff is permitted to amend the pleadings at any stage of proceedings. Order VI Rule 17 reads as follows:

***"Amendment of Pleadings:-** The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial"

9. Furthermore, the proposed amendment would not change the nature of the suit, but the learned trial Judge failed to take note of the same



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and dismissed the amendment application. Hence the findings of the learned trial Judge is set aside. Accordingly this Civil Revision Petition is allowed by setting aside the order dated 29.04.2016, passed in I.A.No.576 of 2015 in O.S.No.557 of 2003 on the file of District Munsif Court, Kallakurichi. Consequently, connected miscellaneous petition is closed. No costs.

17.08.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
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To
1.The District Munsif Court, Kallakurichi.

2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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