



C.R.P. No. 4056 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

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

C.R.P.No.4056 of 2022

and

C.M.P.Nos.21033 & 21035 of 2022

1.Mangali

2.Malliga

... Petitioners

Vs

Sakku Bai(Deceased)

1.Paramandaman

Radha (Deceased)

Muniammal (Deceased)

Dharman (Deceased)

2.Sarasu

3.Shankar

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order dated 09.11.2022 made in EA No.2 of 2019 in EP No.3492 of 1988 in O.S.No.1395 of 1983 on the file of X Assistant City Civil Court, Chennai.



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For Petitioners : Mr.B.Manoharan

For Respondents : Mr.S.Arulandu

ORDER

By challenging the impugned order passed by the learned X Assistant City Civil Judge, Chennai, in E.A.No.2 of 2019 in E.P.No.3492 of 1988 in O.S.No.1395 of 1983 dated 09.11.2022, the petitioners/Judgment debtors have preferred this Revision.

2. The case of the Judgment debtor is that, during the execution proceedings, the respondents / decree holders have filed an application to amend the decree with regard to the description of the property wrongly mentioned as New S.No.70/3 instead of New S.No.70/5. To support their contention, the petitioners have already filed a sale deed with regard to the suit property, which was clearly indicated as S.No.70/5. With regard to other features, TS.No.66 and Block No.27 in the proposed amended schedule describing the plaint schedule in respect of the old Survey number



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remains same and the said application was objected to by the Judgment debtors status that, without amendment, the decree holder is not entitled to file an application before the Execution Court. The judgment debtor raised an objection stating that the decree holder has not furnished the correct particulars correlating the said amendment and during the appeal proceeding also, they did not raise any objection and therefore the application filed by them is not maintainable. Hence he prayed to dismiss the application.

3. On Considering submissions made on either side, the Executing Court held that in the sale deed, which was relied on by the plaintiff dated 05.06.1960, the new S.No.70/5 was wrongly mentioned as S.No.70/3 and therefore it was to be corrected by way of an amendment and not by way of changing the character of the decree. Hence, the relief of the plaintiff in the suit was accordingly allowed.

4. Now the learned counsel for the petitioners / Judgement Debtors submitting that, the respondents / decree holders have straight away filed a petition before the Executing Court, without filing an application to amend



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the decree. To support his contention, he relied on the **Order in 2006 SCC**

Online AP 500: (2007) 1 ALD 367: (2007) 4 ALT 677 in the High Court

of Judicature, Andhra Pradesh at Hyderabad, Yempalla Ramaiah Vs.

Pallamparthi Krishna Reddy and others in CRP.No.6779 of 2003, which

as follows:

1.....Thereafter, respondents filed a petition under Section 152 C.P.C. in E.A.No.9 of 2001 seeking amendment of the decree passed in their favour which was opposed on various grounds by the revision petitioner and others. Negating their contention, the executing Court allowed the said E.A. by the order under revision. Hence this revision.

6. Even if I follow the ratio in Tiko's case(Supra), and treat the petition as a petition to amend the decree filed on the original side, but not a petition in execution, inasmuch as the decree as amended, as per the prayer in this petition would not be in agreement with the operative portion of the judgment it may lead to complication. So unless the judgment is corrected no useful purpose would be served in correcting the decree. So the order under revision is set aside. Respondents are at liberty to approach the Court that passed the decree with a petition for making appropriate corrections in the judgment and consequently, in the decree also, to



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enable him to realize the fruits of the decree obtained by

him."

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5. A perusal of the records, would reveal that the suit was filed in the year 1983, and the respondents / decree holders have filed an application before the Executing Court to amend the Schedule in the Executor petition, without filing an application to amend the decree. Without amending the decree, the decree holder cannot execute the decree by straight away amending the description of the property before the Executing Court, because the execution is only based on the decree passed in O.S.No.1395 of 1983 and therefore, the description of the property mentioned in the decree is also to be amended.

6. Therefore, the objection raised by the petitioners is sustainable. Accordingly the respondents are directed to amend the decree by filing necessary application. However, the order passed by the Executing Court to amend the Schedule in Execution petition shall remain in force. Until the application to amend the decree is filed. Liberty is given to the respondents



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to file an appropriate application to amend the decree, and thereafter proceed with the matter.

7. The Civil Revision Petition is disposed of accordingly. The Connected Civil Miscellaneous Petitions are closed.

15.03.2023

Index : Yes/No

Internet: Yes/No

Speaking/Non Speaking order

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To

The X Assistant Judge,
City Civil Court,
Chennai.

T.V.THAMILSELVI, J.

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