



C.R.P.No.4219 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM:

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

C.R.P.No.4219 of 2023

and

C.M.P.No.25656 of 2023

1. M.Dhayalan

K.Balachandira Reddy (deceased)

2. Athiyammal

3. Nirmala

4. Minor Yogesh

5. Minor Tanushri

6. B.Saraswathi

... Petitioners

-Vs-

C.K.Narayana Reddy

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 05.09.2023 passed in I.A.No.5 of 2023 in O.S.No.124 of 2017 on the file of Addl. District Judge (FTC), Vellore, Vellore Dt.



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For Petitioners

: Mr.C.P.Sivamohan

ORDER

Challenging the impugned fair and decreetal order passed in I.A.No.5 of 2023 in O.S.No. 124 of 2017 passed by the learned Addl. District Judge (FTC), Vellore, Vellore Dt., the Revision Petitioners/plaintiffs preferred this Civil Revision Petition.

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

3. Before the trial court, the Revision Petitioners filed an application in I.A.No. 5 of 2023 to amend the plaint as stated in the petition for the reason that after filing written statement by the defendant, necessity arose for them to make the proposed amendment and also the falsified statements made in the additional written statement as he already raised those objections in the reply statement. That application was objected by



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the defendant stating that to drag on the proceedings, without giving sufficient reasons seeking the amendment as such is not acceptable one.

Considering both side submissions, the trial judge held that as the plaintiffs, they have not proved that inspite of due diligence, they could not raise the pleadings now sought to be impleaded in the plaint. Now, after commencement of trial, they are not entitled to file the said application. Accordingly, the application was dismissed. Challenging the said findings, the Revision Petitioners/plaintiffs preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioners would submit that it is true that P.W.1 was examined and thereafter, the 2nd and 3rd plaintiffs are died and their legal heirs were impleaded. Thereafter, the additional written statement was filed on 10.03.2023 and subsequently, the plaintiffs filed the said application on 27.04.2023 praying to amend the pleadings by denying the allegations made in the additional written statement with regard to the extent of property as well as portion of sale made in favour of one Sujatha in Survey Nos. 67/3E and 66/2B, which are the item Nos.1 and 3 of the suit property. That application was dismissed by the trial



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judge holding that after the cross-examination of P.W.1, the said application was filed, which is not permissible under law. Hence, they prayed to set aside the findings of the trial judge.

5. Records perused. On seeing the entire facts, it reveals that P.W.1. was cross-examined in the month of March 2021 itself and the additional written statement was filed in the month of March 2023. So, the necessity arose for the plaintiffs to amend the pleadings, which is permissible under law. But, without appreciating the said fact, the trial judge erroneously held that to drag on the proceedings, the said application was filed, as such the said observation made by the trial judge is unjustifiable one and the same is liable to be set aside. Furthermore, opportunity is to be given to them to amend the pleadings, since because they have approached the court for the relief much earlier in the year of 2017. So, if such permission is denied, their right to protect the property will be defeated and it will also lead to miscarriage of justice. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.5 of 2023 in O.S.No.124 of 2017 is set aside and the said application, as such is maintainable and the same is ordered to be allowed. Liberty is



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granted to the defendants to file any additional written statement, if any to the said proposed amendment. 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 Addl. District Judge (FTC),
Vellore, Vellore Dt.



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T.V.THAMILSELVI, J.

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