



C.R.P.No.1 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.1 of 2023

1.Tmt.B.Vijayalakshmi

2.J.Sarala

3.Tmt.V.Gunalakshmi

... Petitioners

Vs

R.Balasubrami

... Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 27.10.2022 passed in I.A.No.1 of 2022 in O.S.No.4851 of 2005 on the file of V Assistant City Civil Court, Chennai.

For Petitioners : Mr.L.Chandra Kumar for
Mrs.T.Surekha

For Respondent : Mr.P.Nanda Kumar



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ORDER

The civil revision petition is filed against the order dated 27.10.2022, passed in I.A.No.1 of 2022, in O.S.No.4851 of 2005. The revision petitioners are the plaintiffs who instituted a suit for partition.

2.A preliminary decree was passed in the year 2010 and thereafter, parties to the suit filed a joint compromise memo before the Trial Court and based on the joint compromise memo, the final decree was passed on 26.02.2020. While stamps were called for by the Court concerned, the Court by the Advocate commissioners report found some discrepancies in the schedule. Thus, the revision petitioners filed an Interlocutory Application in I.A.No.1 of 2022 under Order VI Rule 17 of CPC to carry out amendments in the scheduled property. The said petition was adjudicated and dismissed by the Trial Court on the ground that there is no document to establish the amendment sought in the Interlocutory Application and therefore, the petition filed by the revision petitioners cannot be accepted.

3.The learned counsel for the revision petitioner made a submission



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that there was no objection by the defendants in the suit and they have endorsed the discrepancies in the schedule, and the parties also have admitted the discrepancies in the schedule and agreed to get along with the joint compromise memo.

4.In the context of the above facts Order VI Rule 17 proviso clause contemplates that no application for appointment shall be allowed after the trial has commenced in the Court and came to a conclusion, that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. In all other circumstances, the Court may, at any stage of the proceeding, allow either of the parties to alter or amend the pleadings. However in the present case, there is no dispute between the plaintiff and the defendant in respect of certain discrepancies in the scheduled property and they have agreed to divide the properties as per the joint compromise memo filed by the plaintiff and the defendant based on which the final decree proceedings were issued.



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5. Even before this Court, the petitioners have filed an affidavit and a

joint memo by the petitioners and the respondent which is as under:

“1. The Petitioners and Respondent have agreed to adopt the Affidavit filed by the 1st Petitioner herein.

2. The Petitioners and Respondents have agreed to the portions allotted to them as per the joint memo of compromise filed before the lower Court.

3. The Petitioners and Respondent have agreed to furnish the Non-judicial stamp papers for engrossing the final decree to the Registry.

It is therefore prayed that this Hon'ble Court may be pleased to set aside the order passed in I.A.No.1 of 2022 in O.S.No.4851 of 2005 and to direct the registry to furnish the required Non-judicial stamp papers for engrossing the final decree as per the joint memo of compromise filed before the lower Court and thus render justice.”

6. When the parties have agreed to divide the suit scheduled properties as per the joint compromise memo filed before the Trial Court based on which the final decree was passed, this Court is of the opinion that the parties must be allowed to get along with the joint compromise memo



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and the demarcations made in the joint compromise memo.

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7.In view of the facts and circumstances, the order dated 27.10.2022 passed in I.A.No.1 of 2022 in O.S.No.4851 of 2005 is set aside and the petitioners and the respondent are directed to divide their respective portion of the properties as per the joint compromise memo filed by them which culminated into a final decree in O.S.No.4851 of 2005. The Trial Court shall permit the parties to submit the stamp papers for the purpose of engrossing for issuance of certificate copies.

8.With the above directions, the civil revision petition stands **allowed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order
Internet : Yes
Index: Yes

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S.M.SUBRAMANIAM, J.

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