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CRP (MD) No.2109 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.07.2023
Pronounced on	08.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.2109 of 2022

and

CMP(MD)No.9731 of 2022

1.Thangam Religious and Charitable Trust,
Represented by its Executor/Trustee,
Executor appointed as per registered Will
Executed by S.L.Thangam dated 16.08.2012
Office: 109, Court Road,
Nagercoil,
Kanyakumari District.

2.D.Hari
Damodharan Tampi,
Executor Appointed as per registered will
dated 16.08.2012 (No.102/2012)
Office: 109, Court Road,
Nagercoil,
Kanyakumari District.

... Petitioners

Vs.

1.G.Hariharan

2.Lakshmi
Respondents 1 and 2 are represented by their
Power Agent Mr.C.Ramasundaram



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S/o.Chandrasekharan,
Peace Heaven, 18th Road,
Chembur, Mumbai-400 071.

(Third respondent deleted vide Court order dated
13.04.2023 made in C.M.P(MD) No.2265 of 2023)

3.Saleem

4.Yasodharan

5.Pareed Ansari

6.Amir Ali

7.Abdul Nazir

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 10.03.2021 and made in I.A.No.01 of 2019 in A.S.No.60 of 2010 on the file of the Principal District Judge, Kanyakumari at Nagercoil.

For Petitioner : Mr.H.Thayamanaswamy

For R1 & R2 : Mr.S.C.Herold Singh



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ORDER

The above civil revision petition is preferred as against the fair and decretal order dated 10.03.2021 made in I.A.No.1 of 2019 in A.S.No.60 of 2010, on the file of learned Principal District Judge, Kanyakumari at Nagercoil.

2. Brief facts leading this revision are as under:-

The respondents 1 and 2/plaintiffs filed a suit in O.S.No.145 of 1996 on the file of the Sub Court, at Nagercoil, for the relief of declaration of title and permanent injunction and also for rendition of accounts. The above suit was dismissed by the trial Court on 28.10.2004. Aggrieved by this, the respondents 1 and 2/plaintiffs preferred an appeal in A.S.No.60 of 2010 on the file of the District and Sessions Court, Nagercoil. The above appeal suit was partly decreed in favour of the plaintiffs. In the appeal suit, a preliminary decree in respect of half share in the properties of Late.Vaithiyanatha Iyer under Ex.A8 and Ex.B29, was granted in favour of the plaintiffs. Thereafter, the plaintiffs filed an application in I.A.No. 01 of



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2019 in A.S.No.60 of 2010 under Section 152 of CPC to amend the judgment and decree. In the said petition, it is stated that in page No.47 of the judgment, the first appellate Court determined Point No.5 regarding the claim of plaintiffs over the properties under Ex.A7, A8, B18 and B29. But in the decree, it is mentioned that the properties only under Ex.A8 and Ex.B29, the plaintiffs are entitled to 1/2 share and accidentally omitted Ex.A7 and Ex.B18. Even though the operative portion of the judgment it is mentioned that the plaintiffs are entitled to 1/2 share over the properties under Ex.A7, A8, Ex.B18 and Ex.B29, the same was not reflected in the decree. So, in the decree clause (iii) has to be amended as per the judgment. The First Appellate Court also restrained the defendants 4 to 9 from creating encumbrance on the properties as per decree (v) under Ex.A8 and B29 in stead of mentioning Exs.A7, A8, B18 and B29. Since the accidental omission of document numbers mentioned in the judgment, the plaintiffs are unable to proceed with judgment, as such, the amendment of decree is necessitated.

The said petition was resisted on the side of the petitioners by stating



that the petitioners have no right to file the present application. As per the judgment, the decree was correctly drafted and there is no basis at all for the allegations made that in the decree Ex.A7 and Ex.B18 also to be included. There is no accidental omission or omission at all either in the judgment or in the decree regarding the properties in which share was given to the plaintiffs. Nowhere in the judgment, it is mentioned that the plaintiffs are entitled to 1/2 share in the properties included in Ex.A7 and B.18. So, without any basis in the judgment, the respondents 1 and 2 are seeking amendment of decree for claiming share in more properties which they are not entitled to.

However, the first appellate Court, after considering the averments made in the petition and the counter affidavit and the arguments advanced on both sides, allowed the said petition. Against which, the present civil revision petition is preferred.

3. The learned counsel appearing for the petitioners would submit that Section 152 of CPC makes it clear that the amendment can be invoked for the limited purpose of correcting clerical or arithmetical mistakes in the



judgment and the same cannot be invoked for clearing a substantive relief, which was not granted under the decree. Therefore, the provision under Section 152 CPC cannot be invoked to modify, alter or add to the terms of the original order or decree. Therefore, the order passed by the appellate Court is liable to be set aside. To support his contention, the learned counsel relied upon the decision reported in **(2005) 7 SCC 748**.

4. On the other hand, the learned counsel for the respondents 1 and 2 would submit that the basis of the provision under Section 152 of the Code of Civil Procedure is founded on the maxim 'actus curiae neminem gravabit' i.e., an act of Court shall prejudice no man. The maxim is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law", said Cresswell J. in *Freeman v. Tranah* (12 C.B. 406). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified. In ***Master Construction Co. (P) Ltd. v. State of Orissa (AIR 1966 SC 1047)***, it was observed that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or



omission is an error due to careless mistake on the part of the Court, liable to be corrected. To illustrate this point, it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the Court which may say something or omit to say something, which did not intend to say or omit. No new arguments or re-arguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case. Therefore, the trial court has rightly allowed the application, which calls for no interference.

5. Heard on both sides and records perused.

6. On perusal of the judgment rendered in A.S.No.60 of 2010, it is seen that the first appellate Court in point for determination No.5, has categorically held as hereunder:-

"Therefore the plaintiffs cannot claim any right in the



properties under Ex.B16, Ex.B17, Ex.B24 and Ex.B25 which are treated as properties of Ponnammal. Therefore except those properties the other properties in the light of the above discussions are treated as properties of Vaidhyanatha Iyer.

As on the date of the filing of the suit the plaintiffs were under the impression that the properties are joint family properties in the name of Vaidhyanatha Iyer and Ponnammal. As per the evidence Ex.B16, Ex.B17, Ex.B24 and Ex.B25 are treated as separate property of the Ponnammal in the light of the rulings cited by the learned counsel for the respondents.

At the same time in the conclusion of trial this Court accepts the claim of the respondents 1 and 2 regarding Ex.B16, Ex.B17, Ex.B24 and Ex.B25. Therefore the claim of the plaintiffs regarding the properties under Ex.B16, Ex.B17, Ex.B24 and Ex.B25 are rejected. Plaintiffs are entitled only to the properties under Ex.A8 and Ex.A7, Ex.B18 and Ex.B29. Plaintiffs succeed to the same as Class-II heirs along with defendants 2 and 3 as late Vaidhyanatha Iyer died intestate as per evidence available before the Trial Court. Therefore, points for determination-5 is answered accordingly by this Court."

7. Therefore, there is a categorical finding by the first appellate Court



that the plaintiffs are entitled to succeed to the estate of Late Vaithiyanatha Iyer, who died as widower and issueless, as Class-II heirs along with the defendants 2 and 3 i.e., in properties covered under Exs.A7, A8, B18 and B29. Accordingly, the first appellate Court has moulded the relief sought for by the plaintiffs in the suit in O.S.No.145 of 1996, which was filed for the relief of declaration of title and for permanent injunction. However, in the operative part of the judgment, the first appellate Court has stated as follows:-

"Therefore instead of declaration of title as prayed for in the plaint the plaintiffs are granted the preliminary decree of half share in the properties of late Vaidhyanatha Iyer under Ex.A8 and Ex.B29. The plaintiffs are directed to pay appropriate Court fees as per the Tamil Nadu Court Fees and Suit Valuation Act regarding the properties under Ex.A8 and Ex.B29 within one month from the date of receipt of a copy of Judgment and decree in this appeal.

Further the plaintiffs are directed to proceed with final decree by approaching Trial Court for the final decree. The respondents 4 to 9 are restrained through grant of injunction from creating encumbrances in the properties under Ex.A8 and Ex.B29."



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8. The decree was accordingly drafted as per the operative portion.

Therefore, it is a clear case of clerical error. Section 152 of CPC provides for correction of such clerical mistake in judgment, decree or orders. Above being the position, the first appellate Court is right in allowing the application filed under Section 152 of the CPC and the same needs no interference. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The Principal District Judge,
Kanyakumari at Nagercoil.



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K.GOVINDARAJAN THILAKAVADI

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Pre-delivery order made in
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08.09.2023

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