



C.R.P.No.481 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.481 of 2024
and
Civil Miscellaneous Petition No.2276 of 2024

1. Periyathambi

2. Janaki

...

Petitioners

Vs

1. Kaliyappan

2. Perumal

...

Respondents

Prayer: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 13.12.2023 made in I.A.No.3 of 2023 in I.A.No.844 of 2018 in R.E.P No.31 of 2023 in O.S.No.305 of 2023 on the file of the I Additional District and Sessions Court, Salem.

For Petitioners : Mr C. Prabakaran

For respondent : Mr. T.S. Vijaya Raghavan
for R1



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ORDER

The present Civil Revision Petition has been filed to set aside the fair and decreetal order dated 13.12.2023 made in I.A.No.3 of 2023 in I.A.No.844 of 2018 in REP No.31 of 2023 in O.S.No.305 of 2013 on the file of I Additional District and Sessions Court, Salem.

2. The fact of the case is that the first respondent/plaintiff has filed O.S.No.305 of 2013 before the I Additional District and Sessions Court, Salem against the petitioners & 2nd respondent/defendants for partition and also seeks to restrain the first defendant from alienating or encumbering the suit property. A preliminary decree was passed on 18.01.2018 as prayed for. Thereafter, final decree application was filed in I.A.No.844 of 2018, in which Advocate Commissioner was appointed and final decree was passed. Subsequently, the first respondent/plaintiff has filed REP No.31 of 2023 seeking delivery of possession of the property. At that time, the petitioners herein filed CRP No.3688 of 2023 on the ground that an extent of 79 cents alone is available in TS No.14/7C as per Commissioner's report and not an extent of 91 cents as mentioned. This Court, by order dated 19.10.2023,



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directed the plaintiff to file an application to amend the decree for an extent of 79 cents and on filing such application, the Court below was directed to amend the decree and the Execution Court was also directed to proceed with the order of delivery with the amended decree. In pursuance of the said order, the first respondent/plaintiff has filed an application in I.A.No.3 of 2023 for amending the final decree in I.A.No.844 of 2018 and the same was allowed on 13.12.2023. Against which, the present revision has been filed.

3. The learned counsel for the petitioners submitted that the Court below failed to note that there are several discrepancies in the suit property apart from the extent of the property, i.e., survey number, town survey, ward number and block number and no amendment was sought for by the respondent/plaintiff. However, the Court below without considering all these aspects, amended the decree in pursuance of the order passed by this Court in CRP No.3688 of 2023 and seeks to set aside the order and allowed the revision.

4. The learned counsel for the respondent supported the order passed by



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the lower court and submitted that the Old Survey number is 55/1A and 55/2B and the new number is 14/7C and he has also produced the relevant revenue records to that effect. He further submitted that there is no change of survey numbers with regard to the suit properties and the Court below had rightly amended the decree as per the direction of this Court in CRP No.3688 of 2023 and there is no illegality in the impugned order and and hence prays to dismiss the Civil Revision Petition.

5. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the material available on record.

6. On perusal of records, it is noticed that as per Commissioner's report, the the available extent of the property is lesser than that of the decree which has been passed. Hence, this Court, while passing the order in CRP No.3688 of 2023, directed the Court below to amend the decree in pursuance of the commissioner's report on filing application by the plaintiff. Thereafter the petition has been filed by the plaintiff in I.A.No.3 of 2023 to amend the decree. The Court below rightly amended the decree with regard to the extent of the



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property. There is no change in the survey number as stated by petitioners. In view of the above, I find no infirmity in the impugned order and there is no ground for interference and no merit in this revision and hence, it is liable to be dismissed.

7. Accordingly, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

04.03.2024

Index: yes/no
Internet:yes/no
mrp

To

I Additional District Judge,
I Additional District and Sessions Court,
Salem.



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V. SIVAGNANAM, J.

mrp

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