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C.R.P. No.550 of 2022

In the High Court of Judicature at Madras

DATED: 14.03.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**C.R.P.(PD)No.550 of 2022
And CMP.No.2893 of 2022**

1.Sellappan

2.Sathya

3.Minor Surendran

4.Minor Bhuvanesh

(minors rep.by guardian 2nd petitioner)

... Petitioners

vs.

Selvalakshmi

... Respondent

PRAYER:Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 26.03.2021 made in I.A.No.3 of 2019 in O.S.No.208/2016 on the file of Additional Subordinate Judge, Namakkal.

For Petitioner : Mr.Abrar Mohamed Abdullah

For Respondents : Mr.M.Guruprasad

ORDER

This revision petition has been filed against the fair and decreetal



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order passed in I.A.No.3 of 2019 in O.S.No.208/2016, on the file of Additional Subordinate Judge, Namakkal, whereby, the trial court dismissed the IA filed by the revision petitioners/defendants 2 to 5 filed for amending the written statement.

2. The revision petitioners are the defendants 2 to 5 and the respondent is the plaintiff. Plaintiff/respondent filed the suit in O.S.No.208/2016 for Partition. Pending suit, since some inadvertent mistakes have crept in, in the written statement filed, the revision petitioners/defendants 2 to 5 filed I.A.No.3 of 2019 for amendment of written statement.

3. According to the learned counsel for the revision petitioners/defendants, the trial court without proper appreciation of averments raised in the IA, had dismissed the application by impugned order dated 26.03.2021. The learned counsel further submitted that for effective adjudication of the suit, the learned Judge, trial court ought to have allowed to correct the mistake in written statement.

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4. The learned counsel for the revision petitioners/defendants 2 to 5 would further state that infact, Ramasamy has executed a Will but in the written statement by mistake it has been stated as Vaiyapuri; the names of Kandasamy, Vaiyapuri and Ramasamy have been mixed up and the same needs to be corrected and therefore, sought for amendment of written statement before the trial court. The learned counsel, thus pray for allowing the revision petition and consequently, the IA.No.3 of 2019 in O.S.No.208 of 2016.

5. The learned counsel for the respondent would state that no amendment application can be entertained once the trial has commenced, which would cause great prejudice to the right of the plaintiff in the Suit. The plea that an inadvertent mistake has been crept in, was incorrect. The amendment, sought for, if allowed, it would change the nature of the suit at a belated stage.

6. Heard the learned counsel for the petitioner and the respondent.

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7. At the time of admission of this revision petition, notice was ordered and interim stay was granted on 04.03.2022. Thereafter, at the request of the learned counsel for the revision petitioners/defendants 2 to 5, matter was adjourned on 23.09.2022, 27.10.2022, 15.11.2022, 02.12.2022. Thereafter, the matter was posted on 19.02.2024 and again at the request of the counsel for revision petitioners, matter was adjourned to 26.02.2024 and even on that day, since the counsel requested for adjournment, the matter is posted today under the caption “for orders”.

8. A perusal of records would go to show that the respondent/plaintiff has filed a suit for partition. The revision petitioners/defendants 2 to 5 has filed I.A, for amendment of written statement. The learned Judge, after hearing both sides and on careful consideration of the averments, dismissed the I.A. The learned Judge held that if the petition is ordered, it would change the nature of the defence itself; the trial has commenced and the suit being a one for partition, the genealogy and the other facts of the defendants ought to be carefully construed; changing the name of Vaiyapuri to

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Kandasamy and Kandasamy to Ramasamy and Kandasamy to Vaiyapuri has to be substantiated with document; the amendment stating to correct only the clerical mistake, is unacceptable.

9.The change of names and the amendment in the written statement would change the nature of the defence. The suit is of the year 2016. Trial commenced and the plaintiff was cross examined by the defendant. Hence, this court is of the view that both the IA and CRP filed are only to protract the proceedings. Further, the finding of the learned Judge, trial court, is that the amendment sought for by the defendants 2 to 5 stating that it is a clerical mistake is unacceptable and in the interest of justice, IA is dismissed. The said finding is a well reasoned order. Finding no merits in this Civil Revision Petition, this CRP is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. Consequently, interim stay stands cancelled. No costs.

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J.NISHA BANU,J.

Sk/nvsri

To

The Additional Subordinate Judge, Namakkal.

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