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C.R.P.No.4054 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04..11..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Revision Petition No.4054 of 2024

A.Sarada

..... Petitioner

-Versus-

Pachai

..... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 20.03.2024 passed in I.A.No.1 of 2023 in O.S.No.3332 of 2024 passed by the learned XIII Assistant Judge, City Civil Court, Chennai and allow the civil revision petition.

For Petitioner : Mr.R.Venkata Varathan

For Respondent : Ms.R.Chitradevi

ORDER

This civil revision petition has been filed challenging the order dated 20.03.2024 passed by the learned XIII Assistant judge, City Civil Court, Chennai, dismissing the application in I.A.No.1 of 2023 in O.S.No.3332 of



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2014 filed by the plaintiff under Section 152 of CPC seeking to amend the decree and judgement dated 11.12.2019.

2. The petitioner/plaintiff filed a suit in O.S.No.3332 of 2014 for a decree and judgement for mandatory injunction thereby directing the respondent/defendant to remove the illegal construction and tin sheet roof put up in the encroached portion to an extent of 1 foot x 30 feet at the western end and 5 feet x 30 feet at the eastern end, in all 180 square feet on the southern side of the property belonging to the plaintiff which is more fully described in the suit schedule; and for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property by the petitioner/plaintiff.

3. The court below after considering the oral and documentary evidence adduced on both sides, the Advocate Commissioner's Reports and surveyor sketch decreed the suit as under:-

- “(i) the defendant is directed to remove the illegal construction and tin sheet roof put up in the encroached portion to an extent of one inch from East to West on the Southern side of the plaintiff's property in accordance with law; and
- (ii) permanent injunction is granted restraining the defendant



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from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff.”

Thereafter, the petitioner/plaintiff moved an execution petition in E.P.No.399 of 2019 which was allowed on 22.11.2022 in the following terms:

“In the result, the Execution Petition is allowed against the judgement debtor and ordered the decree holder hereby directed to remove the illegal constructions and Tin Sheet Roof put up in the encroached portion to an extent of one inch from East to West on the Southern side which shown in schedule through court bailiff by 22.12.2022. No costs. Batta within a week.”

4. Thereupon, the petitioner/plaintiff filed an application under Section 152 of CPC seeking to amend the decree and judgement dated 11.12.2019 made in O.S.No.3332 of 2014 on the file of the learned XII Assistant Judge, Chennai, with the measurement unit “feet” instead of “inch”. However, that application was dismissed by the court below on merits after hearing both sides. Hence, this revision.

5. Heard both sides.

6. The learned counsel for the petitioner would submit that measurement unit was wrongly mentioned as inch instead of feet which was only a clerical



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mistake which could be set right by the court below invoking the power under

Section 152 of C.P.C.

“Section 152 of CPC reads as under:- Clerical or arithmetical mistakes in judgements, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

7. It is relevant to note that amendment in the judgement, decree or order could be allowed under Section 152 of CPC to rectify any mistake in the judgement, decree or order or errors arising therein from any accidental slip or omission either of its own motion or on the application by any of the parties and it must include an accidental slip or omission traceable to the conduct of the parties themselves.

8. The petitioner/plaintiff though sought for mandatory injunction for the removal of encroachment to an extent of 1 foot x 30 feet at the western end and 5 feet x 30 feet at the eastern end, in all 180 square feet on the southern side of the property belonging to him, the court below after considering both oral and documentary evidence adduced on both sides, the Advocate Commissioner's



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Reports and Surveyor's Sketch decreed the suit only to an extent of one inch from East to West on the Southern side. On appeal, the said decree and judgement of the court below was confirmed by the appellate court by judgement and decree dated 19.12.2019. Therefore, when decree for removal of encroachment was passed by the court below on merits after appreciating the evidence, it cannot be said that measurement unit was mentioned by mistake as “inch” instead of “feet” and that such mistake was only a clerical one which arose out of accidental slip. If the petitioner/plaintiff is not agreeable to the reports of the Advocate Commissioner, he ought to have chosen to challenge the same immediately before the suit was decreed. When the court below decreed the suit on merits and it reached the finality, now it cannot be said that such mistake was only a clerical mistake made out of accidental slip. Thus, this court does not find any merit in the revision and the same deserves only to be dismissed.

In the result, the civil revision petition is dismissed. No costs.

Index : yes / no

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Neutral Citation : yes / no

Speaking / Non Speaking Order

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1.The XIII Assistant Judge, City Civil Court, Chennai



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