



C.R.P.No.4017 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.06.2024

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.No.4017 of 2023
and
C.M.P.No.24592 of 2023

S.Mahavishnu

... Petitioner

Vs

E.Sriramalu Reddiar (died)

1. S.Shanthi

2. S.Sumathi

Pattamal (died)

3. P.Rajamani

4. Perungalathur Town Panchayat,

By its Executive Officer,

5. The Sub Registrar – Padappai,

Having its Office at Padappai Village,

Sriperumbudur Taluk.

6. The Tahsildar – Tambaram Taluk,

Having its Office at Tambaram.

... Respondents

Prayer: Civil Revision Petition has been filed under Article 115 of the Constitution of India to set-aside the fair and decreetal order dated 25.07.2023 in I.A.No.1/2022 in A.S.No.23/2024 on the file of the Subordinate Judge's Court at Tambaram and thereby allow this Civil Revision Petition.



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For Petitioner : Mr.P.Rajendra Kumar
For Respondents :
For R1 & R2 : M/s.J.R.K.Bhavanatham
For R4 to R6 : Mr.C.Sathish
Government Advocate

ORDER

This civil revision petition arises against the order dated 25.07.2023 passed in I.A.No.1 of 2022 in A.S.No.23 of 2014, on the file of the Subordinate Judge Court at Tambaram.

2. Originally, O.S.No.26 of 2011 was presented by the first respondent herein seeking for the relief of recovery of possession after the death of the first defendant.

3. It is the case of the plaintiff that the first defendant who is the owner of the property had settled the property in his favour and after the death of the first defendant, the plaintiff is entitled to take possession of the same. This is on the basis of the Settlement Deed dated 19.07.2004.



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4. The suit had been decreed against which the regular appeal had been preferred in A.S.No.23 of 2014, pending the appeal the first defendant passed away and his legal representatives were brought on record as appellants 2 and 3. On entering appearance, the appellants 2 and 3 filed application to raise additional grounds in terms of Order 41 Rule 2 of C.P.C. The said application came to be allowed against which the present revision.

5. The learned counsel for the petitioner would submit that none of the points urged in the additional grounds has ever been pleaded in the original written statement filed by Sriramulu Reddiar, father of the petitioner and the respondents 1 and 2.

6. The learned counsel for the petitioner would further submit that without pleading, new points cannot be urged in an appeal for this purpose.



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7. The learned counsel for the petitioner has relied upon the following cases:-

- i. *M/s.Modern Insulators Limited vs. The Oriental Insurance Co.Ltd, Civil Appeal No.6895 of 1997 dated 02.22.2000;*
- ii. *K.Mani vs. L.Indumathi, (1998) 2 MLJ 62.*

8. I am dealing with an application under Order 41 Rule 2 of C.P.C. The First Appellate Court is the last Court of law and facts. It is always open to a litigant who is before such Court to raise all the pleas available to him in order to decide the case of the respondents.

9. The fact that there is no pleading in support of the grounds can always be urged at the time of final disposal of the appeal. The powers under Order 41 Rule 2 is unrestricted and the First Appellate Court is empowered to determine the issue that has been raised by the parties one way or the other.



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10. The learned counsel for the revision petitioner would submit that a new plea should not be taken at the time of an appeal or on matters which are touching upon the merits of the case.

11. At the time of dealing with the application in terms of Order 41 Rule 2 of C.P.C., the Court does not go into the merits of the case but merely sees if the new grounds of objection must be admitted or not.

12. The learned Judge has given a reason that she has the power and would decide the matter on merits and without solely being influenced by the additional grounds raised by the respondents 1 and 2.

13. Therefore, I am not inclined to interfere with the Order dated 25.07.2023 in I.A.No.1 of 2022 in A.S.No.23 of 2014, as much water has flown after the order was passed in the Order 41 Rule 2 application, the appeal itself is listed for orders.



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14. In so far as the two judgements that had been relied upon, both related to new points being raised before the Supreme Court in Special Leave Petition and in a Second Appeal under Section 100 of C.P.C.

15. As pointed out above, Section 96 of C.P.C. is fundamentally different from Section 100 of C.P.C. or from a Special Leave Petition urged before the Supreme Court. Hence, both these Judgements are inapplicable.

16. With the above observations, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.06.2024

Neutral Citation: Yes/No

Index: Yes/ No

Internet : Yes/No

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The Subordinate Judges Court,
Tambaram.



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V.LAKSHMINARAYANAN, J.
rgm

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and
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