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C.R.P.No.2919 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2919 of 2021 and
C.M.P.No.20993 of 2021

Amudha

... Petitioner

Vs.

1.A.Ganesan

2.Murugan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order of the First Additional District Munsif Judges Court, Kallakurichi dated 04.12.2020 in I.A.No.234 of 2020 in O.S.No.149 of 2014.

For Petitioners

: Mr.P.Valliappan
Senior Counsel
for Mr.T.Deeraj

For Respondents

:M/s.P.Gowsalya
for M/s.Dr.Vai Shanmugam for R1
R2-No appearance

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application for amendment of the plaint.

2.The petitioner herein filed a suit for declaration and injunction in



respect of the suit property which are described as four items in the schedule to the plaint.

3. As per the description of the property found in the schedule to the plaint, the 1st item of the suit property is mentioned as 17 cents of land in Survey No.177/7 in Emaper village. It is the case of the petitioner that pending the suit, he sold portion of the suit property in item 1 namely 1918 Sq.ft in favour of 2nd respondent by way of sale on 14.08.2014. The 2nd respondent also got the sub-division number and patta in his favour based on that sale. Therefore, the petitioner wants to delete the sold portion in item 1 from the description of the suit property. The said application was dismissed by the Court below on the ground that amendment application filed by the petitioner cannot be allowed as it is hit by doctrine of *lis pendens*.

4. The petitioner filed a suit in respect of 17 cents of land described as item 1. Now, he wants to restrict his claim by deleting 1918 Sq.ft sold to the 2nd respondent pending the suit. When petitioner/plaintiff himself admits the sale of portion of the suit property in favour of 2nd respondent/ 2nd defendant and



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wants to restrict his claim in respect of remaining portion, allowing of the amendment would not cause any prejudice to the respondent. Further, as per the averment made by the petitioner in the affidavit filed in support of the amendment application, the real controversies between the parties lying only in respect of remaining property in item 1 excluding 1918 Sq.ft sold by the petitioner to the 2nd respondent. Hence, the Trial Court committed an error in dismissing the amendment application.

5. Accordingly, the Civil Revision Petition stands allowed by setting aside the fair and decretal order passed in I.A.No.234 of 2020. The petitioner is directed to carry out the amendment within a period of 14 days from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes / No

Internet : Yes / No

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S.SOUNTHAR, J.

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To

The learned First Additional District Munsif Judge, Kallakurichi.

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