



C.R.P.(MD)Nos.412 & 413 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.10.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)Nos.412 & 413 of 2024

and

C.M.P.(MD)Nos.2052 & of 2024

Manickam (died)

Dhanalakshmi (died)

1.Sakthivel

2.Dhandapani

... Petitioners / Respondents / Defendants 1 to 4

in both C.R.Ps.

Vs.

Lakshmi

... Respondent / Petitioner / Plaintiff

in both C.R.Ps

Prayer in C.R.P.(MD)No.412 of 2024: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 02.01.2024 made in I.A.No.8 of 2023 in O.S.No.37 of 2023 on the file of the District Munsif Court cum Judicial Magistrate, Krishnarayapuram, set aside the same and allow this civil revision petition.

Prayer in C.R.P.(MD)No.413 of 2024: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the



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impugned fair and decreetal order dated 02.01.2024 made in I.A.No.9 of 2023 in O.S.No.37 of 2023 on the file of the District Munsif Court cum Judicial Magistrate, Krishnarayapuram, set aside the same and allow this civil revision petition.

For Petitioners : Mr.S.Srinivasaraghavan

For Respondent : Mr.V.Muthukamatchi
(in both C.R.Ps.)

COMMON ORDER

Heard both sides.

2. The petitioners are figuring as defendants in O.S.No.37 of 2023 on the District Munsif Court, Krishnarayapuram. The plaintiff filed I.A.No.8 of 2023 for amendment of the suit schedule. To facilitate the same, she also filed I.A.No.9 of 2023 for reopening. Both IAs were allowed vide order dated 02.01.2024. Challenging the same, these civil revision petitions came to be filed.

3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds of revision petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned counsel appearing for the plaintiff/respondent submitted that the impugned order is well reasoned. He also submitted that the plaintiff is



84 years old woman and that therefore this Court may have a sympathetic approach. He highlighted the fact that the suit is one for partition.

5. I carefully considered the rival contentions and went through the materials on record.

6. The suit was instituted in the year 2013 itself. The amendment petition was filed in 2023. By then, the witnesses for the defendants had been cross examined. The case was almost posted for argument. It was at that stage, I.A.No.9 of 2023 was filed for reopening and I.A.No.8 of 2023 was filed for amendment. It is seen that in the original plaint, the four boundary description has not been given. Only survey numbers have been mentioned. Almost all the survey numbers are sought to be changed.

7. This would clearly alter the very character of the suit. The property itself is sought to be changed. I can understand if the four boundary is maintained intact and the survey number alone is changed, that would not make any difference. But where the four boundary description has not been given and the survey number is changed, that would lead to changing the suit schedule itself. The amendments are two fold; pre trial amendment and post trial amendment. In the case of post trial amendment, the applicant must satisfy what is known as due diligence test. In this case, the plaintiff has miserably failed in the test.



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G.R.SWAMINATHAN, J.

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8. Looked at from any angle, the impugned orders cannot be sustained. They are set aside. The Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The District Munsif Court cum Judicial Magistrate,
Krishnarayapuram.

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