



CMP(MD). No.8997 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Friday, the Thirteenth day of September Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice P. DHANABAL

CMP(MD). No.8997 of 2024
in
AS NO.703 of 1992

1. C.V.Ahamed Kutty (Died)
2. C.V.Alavi Kutty
3. Kunju Koyambu (Died)
4. Fathima Kutty
5. Abdul Khader
6. Faizal
7. Abida
8. Shaharabanu
9. Iyyathumma (Died)
10. Ayisha Beevi
11. Fathima
12. Sainaba
13. Muhammed Ashraf
14. Muhammed Basheer

...Petitioners/ Appellants

Vs

1 S.Ramalingam (Died)

<https://www.mhc.tn.gov.in/judis>



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2 S. Rajendran

3 Sengamala Servai Died

4 Rengasamy Servai Died

5 Sathiamurthy (Died)

6 Govindammal (Died)

7 Perumalsamy Naidu (Died)

8 Chinnathambi

9 Kottaisamy Naidu

10 Lakshmi

11 Kaliaperumal

12 Soundarajan

13 Arumugam

14 Selvi. Pushpam (Died)

15 Tmt. Mariammal

16 Tmt. Nagarathinam

17 Tmt. Tamilarasi(Died)

18 Mahalingam (Died)

19 Mahadevan (Died)



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20 Ganesan

21 Gowri

22 Manikandan

23 Geetha

24 Manoharan (Died)

25 Thilagavathi

26 Valarmathi

27 Ayyappan(Died)

28 Revathi

29 Kalaiselvi

30 Nanthakumar

31 Lalitha

32 Ashwanth

33 Ashwanth

34 Kalarani

35 Sakthi Prakash

36 Nithish Kumar

37 Indhira



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38 R. Shivakumar
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39 R. Subha

40 R. Agalya

41 R. Kumaran

42 Agilandam

43 Jeya

44 Rajam

45 Susila

46 Rajeswari (Died)

47 Navaneetham

48 Meenakshi

49 Pattammal(Died)

50 Prema

51 Sampasivam

52 Ambikapathi (Died)

53 Karuppaiah

54 Muthukumar

55 Karthikeyan

56 Indhiragandhi

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57 Muthulakshmi

58 Muthukumar

59 Nagalakshmi

60 Kalpana

61 Indhumathi

62 Alagaresan

63 Shanmugapriya

64 Rakshana

65 Nethra

... Respondents/ Respondents

Prayer :-

Civil Miscellaneous Petition filed under section 151 of CPC to amend the schedule of properties as 19 to 22 instead of 23 to 26 mentioned in the judgment and decree made in A.S. No. 703 of 1992 dated 21.06.2024 and thus render justice.

PRAYER: The Appeal Suit is filed under under Order 41 Rule 1 of Code of Civil Procedure to set aside the judgement and decree of the Subordinate Court, Tanjore in O.S.No. 26 of 1984 dated 07.10.1991 in so far as it relates to the appellants suit items 19 to 22.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of

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Mr.V.Meenakshi Sundaram, Advocate for Mr.S.Thilagavathi, Advocate for the 2nd Petitioner and of Mr.J.Barathan, Advocate for Mr.I.Velpradeep, Advocate for the 4th to 8th petitioners , and of Mr.A.S.Mohammed Manzoor, Advocate for the 10th to 14th petitioners and of Mr.A.Senthil Kumar , Advocate for the 2nd Respondent and of Mr.P.Vadivel, Advocate for the 15th and 16th Respondents and of Mr.T.Selvan, Advocate for the 21st to 23rd , and 31st to 36th Respondents and of Mr.V.Ragavachari Senior Counsel for Mr.H.Thayymanasamy , Advocate for the 37th to 41 Respondents and of Mr.M.P.Senthil, Advocate for the 42, 44, 48, 50, 51, 53 to 55, 59 to 62 Respondents and of Mr.K.Kuppusamy, Advocate for the 43 and 47th Respondents and of Mr.K.Guhan, Advocate for the 45th Respondents this Court made the following order:

This miscellaneous petition has been filed by the petitioners/ appellants/defendant No.10 and the legal heirs of defendants 9 and 11 seeking to amend the schedule of properties in the judgment and decree passed in A.S.No.703 of 1992 dated 21.6.2024 as item Nos.19 to 22 instead of item Nos.23 to 26.

2. Heard the learned counsel appearing on either side.

3. Learned counsel for the petitioners would contend that the fourth petitioner herein is the fourth appellant in the main appeal. In the year 2017, when the said appeal was taken up for final hearing, the petitioners came to know that in the grounds of appeal, the schedule of properties were wrongly described as item



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Nos.23 to 26. Actually, the claim of the appellants is only with regard to item Nos.19 to 22. But, unfortunately, the schedule of properties were wrongly described as item Nos.23 to 26. Therefore, earlier, they filed C.M.P.(MD) No.2295 of 2018 to amend the items of properties as item Nos.19 to 22 instead of item Nos.23 to 26 and the same was allowed on 07.6.2023. Thereafter, this Court allowed the main appeal namely A.S.No.703 of 1992 through judgment and decree dated 21.6.2024. In the said judgment dated 21.6.2024, the items of properties were inadvertently mentioned as item Nos.23 to 26 instead of Item Nos.19 to 22. Hence, the petitioners filed the present petition seeking to correct the typographical error that has crept in in the judgment and decree. No prejudice would be caused to the other side by allowing this miscellaneous petition.

4. Per contra, the learned counsel for the respondents would contend that the petitioners have not amended the original plaint and the appeal memorandum, that now, they sought for amendment only in respect of judgment and decree of this Court dated 21.6.2024 passed in A.S.No.703 of 1992 and that the present miscellaneous petition is not maintainable without amending the original plaint and the appeal memorandum. Hence the miscellaneous petition may be dismissed.

5. In support of his contentions, the learned counsel for the respondents

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placed relied on the following judgments of the Supreme Court in :

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- "i. Uttar Pradesh State Road Transport Corporation Vs. Imtiaz Hussain [2006-I-LLJ 714]*
- ii. State of Punjab Vs. Darshan Singh [2004 (1) SCC 328]*
- iii. Dwarka Das Vs. State of Madhya Pradesh and another [AIR 1999 SC 1031]."*

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

7. Upon hearing both sides and perusing the records, the point for determination in this miscellaneous petition is whether this petition has to be allowed or not.

8. This petition has been filed by the petitioners seeking to amend the items of properties in the judgment and decree passed by this Court on 21.6.2024 in A.S.No.703 of 1992. This Court, while passing the judgment, mentioned the items of properties as item Nos.23 to 26 instead of item Nos.19 to 22. In fact, the items of properties have already been amended as Item Nos.19 to 22 as per order of this Court dated 07.6.2023 in C.M.P. (MD) No.2295 of 2018. However, the respondents



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objected to allow the present miscellaneous petition alleging that without amending the schedule of properties in the trial court pleadings and in the original plaint, this petition is not maintainable.

9. As per the order of this Court in C.M.P.(MD) No.2295 of 2018 in A.S.No.703 of 1992 dated 07.6.2023, the items of properties mentioned as item Nos.23 to 26 have been amended as item Nos.19 to 22. Even after that, this Court without perusing the amendment, inadvertently in the appeal judgment marked the properties as item Nos.23 to 26 instead of item Nos.19 to 22. Therefore, the said suit item numbers recorded in the appeal judgment in A.S. No.703 of 1992 dated 21.06.2024 are only due to the typographical error and the same are to be amended.

10. As above stated, this Court had already ordered to amend the items of properties as item Nos.19 to 22. Therefore, in the interest of justice, the present miscellaneous petition has to be allowed and no prejudice would be caused to the other side if the present petition is allowed. Further, the respondents have not raised any serious objections while allowing the petition in C.M.P.(MD) No.2295 of 2018 on 07.6.2023 to amend the items of properties in the grounds of appeal in A.S.No.703 of 1992. Moreover the respondents have not filed any appeal as against



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the said order dated 07.6.2023 in C.M.P.(MD) No.2295 of 2018. Hence, as per the above said order of this Court, the items of properties have been amended as item Nos.19 to 22. In the above said circumstances, it is appropriate to allow this petition.

11. As far as the judgments relied upon by the learned counsel for the respondents are concerned, they will not be applicable to the facts of the present case, because the schedule of properties and the memorandum of appeal were already amended as per the order of this Court.

12. In the result, this petition is allowed and the items of properties are amended as item Nos.19 to 22 instead of item Nos.23 to 26.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/11/2024

Sub Assistant Registrar
(CS- I, II, III, IV)

TO

The Subordinate Judge,
Tanjore .



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ORDER DATED : 13/09/2024

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ORDER

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in

AS No.703 of 1992

Giving direction and etc.
as stated within.

RD(14/11/2024) 11P / 2C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.