



C.R.P(MD)No.2796 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.R.P(MD)No.2796 of 2023
and C.M.P(MD)No.14605 of 2023

Chandra ...Petitioner/4th Respondent/4th Defendant

Vs.

1.Rajendran(died)
2.Mahendran (died)... Respondents/Petitioners/Defendants 1 &2
3.Jegadeeswari .. 3rd Respondent/1st Respondent/Plaintiff
4.R.Muthalvan
5.Thiruvalan ... Proposed Respondents 4 & 5

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, as against the fair and decreetal order dated 07.01.2023 made in I.A.No.310 of 2019 in O.S.No.16 of 2007 on the file of the learned Subordinate Judge, Uthamapalayam.

For Petitioner : Mr.P.Arun Jayatram

For R3 : Mr.N.Tamilmani

For R4 & R5 : Mr.R.A.Mohanram



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ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 07.01.2023 made in I.A.No.310 of 2019 in O.S.No.16 of 2007 on the file of the learned Subordinate Judge, Uthamapalayam.

2. The suit in O.S.No.16 of 2007 was filed by the 3rd respondent herein namely Jegadeeshwari for partition and separate possession. Pending suit, I.A.No.310 of 2019 was filed by the defendants 1 and 2/respondents 1 and 2 herein to exonerate the petitioner/4th defendant from the suit and for impleading the respondents 4 and 5 herein as legal representatives for the 2nd defendant.

3. The learned Subordinate Judge, Uthamapalayam, by taking 3 other petitions along with I.A.No.310 of 2019, has passed a



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common order dated 07.01.2023, allowed all the petitions without assigning any reason.

4. The learned counsel for the petitioner/D4 would contend that in I.A.No.310 of 2019, though it is stated that there is compromise between the the respondents 1 and 2 herein/D1 & D2, the same has been disputed by the petitioner/D4 in the counter affidavit. The court below has not considered the said counter affidavit and erroneously allowed I.A.No.310 of 2019 and exonerated the petitioner in the suit. According to the learned counsel for the petitioner, without considering the specific averments made in the counter affidavit, the court below has passed a non-speaking order and the same may be set aside by this Court.

5. The learned counsel appearing for the 3rd respondent/ plaintiff would fairly admit that the abovesaid mistake has been committed by the trial court.



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6. Heard both sides and perused the materials available on record.

7. Though it is stated that the petitioner/D4 has received share through a proper deed and has released the rights, I am of the view that upon passing final judgment, deleting one of the parties without confirming the compromise between the parties may not be proper. It appears that the compromise said to have been arrived between the co-defendants. When it was objected by the petitioner, he has to be retaken to the proceedings. For that purpose, the plaintiff is directed to file a proper application to include this petitioner as the 4th defendant in the suit, as originally stood.

8. In view of the oldness of the matter, there was a direction for speedy disposal by this Court in the earlier occasion. The said direction must be complied by the trial court.



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9. With the above directions, this Civil Revision Petition is allowed and the order dated 07.01.2023 made in I.A.No.310 of 2019 in O.S.No.16 of 2007 on the file of the learned Subordinate Judge, Uthamapalayam, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

08.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
CM

To

1.The Subordinate Judge,
Uthamapalayam.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J.

CM

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