



C.R.P(MD)No.3034 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.12.2024**

CORAM

**THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.3034 of 2023
and
C.M.P(MD)No.15613 of 2024

1.R.Shanmugavel

2.Kalaimani

... Petitioners

Vs.

K.Rasammal

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 14.07.2023 made in I.A.No.2 of 2023 in O.S.No.114 of 2022 on the file of the District Munsif Court, Paramakudi and pass such further or other orders as this Court.

For Petitioners : Mr.I.Robert Chandrakumar

For Respondent : Mr.R.Murali



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ORDER

This Civil Revision Petition is preferred against the order passed in I.A.No.2 of 2023 in O.S.No.114 of 2022, dated 14.07.2023 on the file of the District Munsif Court, Paramakudi. The above suit in O.S.No.114 of 2022 was filed by the petitioners / plaintiffs for the relief of redemption of mortgage. Thereafter, the petitioners / plaintiffs filed an application under Order VI, Rule 17 of the Civil Procedure Code, 1908 to amend the plaint by including the prayers for declaration of title and recovery of possession. However, the Trial Court dismissed the said application stating that in the support affidavit, nothing is stated about the Court fee. Assailing the said order, the present revision is preferred.

2. The learned Counsel appearing for the revision petitioners would submit that at any stage of the proceedings, amendment petition can be allowed to arrive at a fair conclusion. However, the Trial Court without considering the above facts, dismissed the said application which requires consideration by this Court.



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3. On the other hand, the learned Counsel appearing for the respondent would submit that the petition is not maintainable and the petitioner failed to produce document to show the value of the property for seeking a declaratory relief. Therefore, the Trial Court was right in dismissing the application which calls for no interference.

4. Heard the learned Counsel for the petitioner and the respondent and perused the materials available on record.

5. The Trial Court has observed that for the relief of declaration and recovery of possession, the same should be claimed under Section 25(a) of the Tamil Nadu Court Fee and Suits Valuation Act for the market value of the property. However, the amendment was sought under Section 25(b) which is incorrect and that the petitioner did not file any document to show the value of property for declaratory relief, which order of the Trial Court as rightly pointed out by the learned Counsel appearing for the revision petitioner that before commencement of the trial at any stage, the plaint can be amended to have a fair adjudication.



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The Trial Court has dismissed the said application stating that proper Court fee is not stated in the amendment petition for seeking the relief of declaration. Moreover, by quoting a wrong provision for payment of Court fee, the petition filed for amendment cannot be dismissed. The petitioner in the support affidavit also undertakes to pay the requisite Court fee. Therefore, the order passed by the Trial Court is liable to be set aside. However, the petitioner is directed to pay the correct Court fee for the said reliefs claimed in the amendment petition.

6. Accordingly, with the above direction, this Civil Revision Petition stands disposed of. The respondent is also permitted to file his additional written statement, if required. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

06.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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The District Munsif Court,
Paramakudi.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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