



WEB COPY

C.R.P. No.1337 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-04-2025

CORAM

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRP.No.1337 of 2025

Manivannan (Died)

1. Jayalakshmi
2. Vijayalakshmi
3. Saraswathi
4. Chandrasekaran
5. Kishnmoorthy
6. Elumalai
7. Eswaran
8. Vinayagam
9. Vijayakumar

... Petitioners

Vs.

Saroja Ammal (Died)

Sakku Bai (Died)

Veerabadhran (Died)

1. Vinayagam
2. Gnanasekar
3. Balasubramaniam

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Docket Order dated 02.09.2024 passed by the District Munsiff, Chengalpattu, in I.A.No.1 of 2023 in O.S.No.176 of 1997.



For Petitioner : Mr.N.Sivaprakash

ORDER

WEB COPY

This Civil Revision Case has been filed by the petitioner to set aside the Docket Order dated 02.09.2024 passed by the District Munsiff, Chengalpattu, in I.A.No.1 of 2023 in O.S.No.176 of 1997 dismissing the petition as not maintainable, filed by the petitioner to amend the decree with the S.No.267/5, as found in the plaint.

2. This Court, on 01.04.2025, has allowed the revision petition in the open Court. However, before signing the order, while perusing the documents, the Court entertained a doubt regarding the Survey Number mentioned in the original plaint. Hence, the matter was listed on 04.04.2025 under the caption "for clarification" during which, this Court directed the Registry to call for the original plaint in O.S.No.176 of 1997 from the District Munsif Court, Chengalpattu and the matter was ordered to be listed the today (on 16.04.2025).

3. Today (16.04.2025), when the matter is taken up for hearing, the original plaint is placed before this Court. On examination of the same, this Court is satisfied that the Survey Number relates to the subject matter in issue is



S.No.267/5, for which, the amendment has been sought. Thereupon, the following order is passed.

WEB COPY

4. The brief facts of the case are as follows :-

4.1. The petitioners are the legal heirs of one Manivannan, who had filed a suit in O.S.No.176 of 1997 against the defendants/respondents before the Additional District Munsif, Chengalpattu, seeking for a direction to defendants 1 and 2 to execute the sale deed in favour of the plaintiff. The said suit was decreed on 21.11.2005.

4.2. Thereafter, the plaintiff had filed an execution petition in E.P.No.31 of 2006 to enforce the judgment and decree and the executing Court had executed the sale deed in favour of the plaintiff.

4.3. It is pertinent that the respondents after filing the written statement, did not contest the case and they have also not contested in execution petition, thereby, the Court had executed the sale deed in favour of the petitioners' father in respect of the schedule mentioned property. The sale deed was registered at the office of SRO, Thiruporur on 29.11.2007 in Doc No.10807 of 2007.

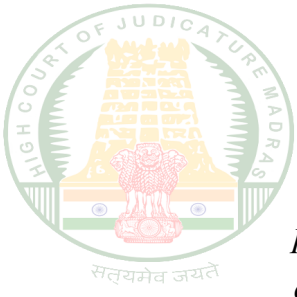


WEB COPY

4.4. Thereafter, the plaintiff died interstate on 27.02.2019 leaving behind the petitioners as his legal heirs and when the petitioners had attempted to divide the properties owned by their father and applied for revenue records and other things, it is brought to their notice that the Survey Number of item No.4 of the scheduled mentioned property was wrongly mentioned as 257/5 instead of Survey No.267/5.

4.5. On verification, the petitioners found that their father Manivannan, in the plaint, had correctly mentioned the Survey Number as 267/5 in item No.4. However, in the decree dated 21.11.2005, it was mentioned as 257/5.

4.6. Thereafter, the petitioners had filed an application to correct the error in the sale deed, however, it was returned with an advice to file necessary application for amending the decree. Thereby, the petitioners had filed an application under Section 152 CPC seeking to rectify the unintentional and accidental error occurred in the decree with respect to the survey number 267/5. However, the learned Judge dismissed the petition by passing the following order:-



WEB COPY



“Already original decree found in bundle. Now the petitioner has come up with the same petition accompanying certified copy of the decree. Nothing new happened after 26.09.2023, after passing docket order as “this court has become “functus Officio”, this petition is returned as not maintainable. In original plaint S.No.257/5 is mentioned, the same has been incorporated in the decree. Therefore this court has no authority to amend the decree as the same was passed based on original plaint having S.No.257/5. Therefore this petition is dismissed as not maintainable.”

Challenging the same, the present revision petition has been filed.

5. The submissions of the learned counsel for the petitioner are as follows :-

5.1. The correct survey number has been given in the plaint and the respondents, who have filed the written statement, have also not objected the same. However, an error has been crept in the decree, where, the Survey No. 267/5 has been wrongly mentioned as Survey No.257/5 in respect of the 4th item. Since the error was not corrected, it had also reflected in the sale deed which was executed later by the Court. Later, when the petitioners intended to divide the property, it came to their knowledge.



WEB COPY

5.2. Section 152 of CPC gives ample power to the Court either on its own motion or on the application filed by parties to correct the clerical or arithmetical mistakes or errors in the decree or orders arising from any accidental slips or omissions at any time. The Court which has passed the decree does not become functus officio while executing powers under Section 152 of CPC. Thereby, the trial Court ought not to have return or dismiss the application seeking for a correction holding that it does not have powers.

5.3. It is only an inadvertent error which would not affect the merits of the case and a successful plaintiff should not be deprived of the fruits of the decree. Resort can be had under Section 152 or Section 47 of CPC depending on the facts and circumstances of each case whichever of the provisions would be more appropriate, just and convenient to invoke. A decree of a competent court, should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission.

5.4. In support of his contention, he relied on the judgment passed by the Hon'ble Apex Court in the case of *Pratibha Singh and Ors. vs. Shanti Devi Prasad and Ors.* reported in (2003) 2 SCC 330.



6. The relevant portion of the above judgment is extracted hereunder :-

“17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case – which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC.”

7. Heard the learned counsel appearing for the petitioner and perused the materials available on record. In this case, the respondents have stood ex parte and they have also not contested the execution petition and in such circumstances, this Court is of the opinion that no notice is necessary to be sent to the respondents.



8. Perusal of the record shows that there had been an accidental mistake

and in the plaint, correct survey number has been mentioned in respect of the Item 4 of the suit schedule property, whereas, an error had crept only in the decree which was also followed while executing the sale deed. Due to an inadvertent error crept in the decree, the parties are unable to enjoy the fruits of the decree.

9. Accordingly, this Civil Revision Petition stands allowed and the docket order dated 02.09.2024 passed by the District Munsif, Chengalpattu, in I.A.No.1 of 2023 in O.S.No.176 of 1997, is set aside. The learned District Munsif is directed to conduct the enquiry and shall pass appropriate orders to carry out the necessary correction in the decree and shall also take steps to rectify the same in the sale deed. No costs.

klt

16-04-2025

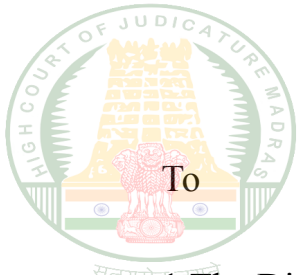
Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

Note: Registry is directed to return the original plaint to the Lower Court concerned .



To

C.R.P. No.1337 of 2019



1. The District Munsiff, Chengalpattu
2. The Section Officer, V.R.Section, High Court, Madras.



WEB COPY

C.R.P. No.1337 of 2



A.D.JAGADISH CHANDIRA,J.

klt

CRP No.1337 of 2025

16-04-2025