



A.S.No.286 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 20.03.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.286 of 2022

K.Arthanari

... Appellant/Plaintiff

-VS-

Smt.P.Alamelu

Smt.T.Vanathi

Smt.V.Neelaveni

Smt.S.Malathi

(Represented by their Power Agent, the 1st Respondent)

1. Mr.P.Sathishkumar

2. Mr.K.Ponnusamy

3. Mr.P.Senthilkumar

4. Ms.S.Mithula

5. Ms.S.Keerthana

6. Mrs.Kalaivani

... Respondents/Defendants

Prayer: Appeal Suit is filed under Section 96 of the CPC to allow the appeal, setting aside the judgment and decree of the Trial Court (Additional District Judge, Namakkal) dated 01.11.2021 passed in O.S.No.173 of 2017 and decree the suit in O.S.No.173 of 2017 granting the reliefs of rectification of the mistake found place in the sale deed as prayed for.

For Appellant : Mr.K.A.Mariappan

For R1 to R6 : M/s.A.Kunjammal



A.S.No.286 of 2022

J U D G M E N T

WEB COPY

A challenge has been made to the decree and judgment of the Trial Court, dismissing the suit filed for rectification of the Survey Number.

2. The parties are arrayed as per their own ranking before the Trial Court.

3. The case of the plaintiff/appellant is that he had purchased Plot Nos.84 and 85 in the layout developed by the defendants 1 to 6, Alamelu, T.Vanathi, V.Neelaveni and S.Malathi. While registering the document on 15.07.2013, the Survey Number has been wrongly mentioned as 38/1A instead of 37/1 and the said mistake came to the knowledge of the plaintiff, when he approached the Village Administrative Officer for getting a certificate to avail a loan in the year 2017. Therefore, the plaintiff requested the defendants to rectify the mistake by way of rectification deed. Since the defendants have not come cooperated for rectification of the mistake, the plaintiff has filed the suit.



A.S.No.286 of 2022

4. The defendants 1 to 4 & 6 remained exparte. Since the 6th defendant was minor, a guardian was appointed by the Court and submission has been made on behalf of the minor to prove the case of the plaintiff.

5. The Trial Court, on the basis of the aforesaid pleadings, framed the following issues:

i) Whether the suit is bad for non joinder of necessary parties?

ii) Whether the suit is not maintainable without the relief of declaration sought for?

iii) Whether the suit is barred by limitation?

6. The Trial Court has dismissed the suit mainly on the ground that the owner of the property was not impleaded. Aggrieved over the same, the present appeal has been filed.

7. Learned counsel for the appellant would mainly submit that the 1st defendant is not only the Power Agent, but also the brother of T.Vanathi, V.Neelaveni and S.Malathi and Alamelu is his mother. The



A.S.No.286 of 2022

certificate issued by the Deputy Tahsildar, Namakkal, which was marked as

WEB COPY

Ex.A2 clearly shows that the correct Survey Number is 37/1 and the same has not been disputed by the defendants. The Trial Court has dismissed the suit merely on the ground that owners of the property in respect of S.No.37/1 have not been made parties. He would further submit that there is a mistake in the Survey Number alone, which has not been refuted by the defendants and therefore, the Trial Court ought to have decreed the suit.

8. Learned counsel for the respondents would fairly contend that there is no serious objection raised by the respondents in respect of rectification of the mistake that was crept in.

9. In the light of the above, the point for consideration in this appeal is as to whether the Trial Court is right in dismissing the suit on the ground of non joinder of necessary parties alone?

POINT:

10. It is not in dispute that a large extent of area had been pooled together and a layout has been formed. The layout consisted of



A.S.No.286 of 2022

WEB COPY

Survey Nos.37/1, 38/1, 39/1, 39/2 and 40/6. Ex.A1 / Sale Deed indicates that the property originally belonged to one Periyasamy and his brothers by virtue of Partition Deed dated 21.05.1980. All the legal heirs together formed a layout and sold the properties to various persons as house sites. The plaintiff purchased Plot Nos.84 and 85 under Ex.A1. Though the description of the plots indicates the correct Survey Number, in the document, it has been wrongly mentioned as S.No.38/1.

11. According to the plaintiff, the said mistake came to the knowledge of the plaintiff, when he approached the Revenue Authorities for obtaining a certificate for availing a loan and the certificate issued by the Revenue Department has been marked as Ex.A2. Of course, the author of the certificate has not been examined. The fact remains that the certificate has been issued by the Deputy Tahsildar and the authenticity of the same is not disputed. The defendants also remained exparte. Correct boundaries are also set out. When there is a mistake in the Survey Number, the vendor is duty bound to rectify the mistake. Otherwise, the valuable right of the plaintiff will be affected considerably.



A.S.No.286 of 2022

12. It is relevant to note that though some of the vendors,

namely, Alamelu, T.Vanathi, V.Neelaveni and S.Malathi were not made as defendants independently, the fact remains that their Power Agent by name P.Sathishkumar was made as a party, who is none other than the brother of T.Vanathi, V.Neelaveni and S.Malathi and son of Alamelu. When the family members are represented through a particular party, it cannot be said that without the family members, the lis cannot be adjudicated. Therefore, this Court is of the view that though the family members are proper properties, they are not necessary parties to hold that the lis cannot be decided in their absence.

13. In such view of the matter, the instant Appeal Suit is allowed and the finding of the Trial Court, dismissing the suit is set aside. The point is answered accordingly. The suit is decreed as prayed. No costs.

20.03.2025

Index: Yes / No
Internet: Yes / No
ar



WEB COPY



A.S.No.286 of 2022

To:

1. The Additional District Judge,
Namakkal
2. The Section Officer,
V.R.Section,
High Court,
Madras.



WEB COPY



A.S.No.286 of 2022

N.SATHISH KUMAR,J.,
ar

A.S.No.286 of 2022

20.03.2025