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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2025

Delivered on : 16.06.2025

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.2376 of 2023

1. Mrs.Datchayani
2. Mrs.Sarasu
3. Mr.Ulaganathan

Petitioners

vs.

Mr.Bakthavatchalam

Respondent

Civil Revision Petition filed under 115 of C.P.C. against the Fair and Decretal order dated 01.03.2023 passed in I.A.No.1 of 2022 in O.S.No.90 of 2009 on the file of the Subordinate Judge, Poonamallee.

For Petitioners : Mr.R.Prabakar

For Respondent : Mr.M.L.Ravi for
M/s.T.Sivagnanasambandhan

ORDER

An order rejecting to entertain the claim of the plaintiff/decreed holder to carry out an amendment of survey number in respect of the suit property after the final decree was passed, has been put to challenge in the present civil revision petition.



2. Brief facts of the case:-

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i) The revision petitioners had filed a suit in O.S.No.90 of 2009 against the defendant/respondent herein for partition and separate possession of their 3/4 share in the suit schedule property and for permanent injunction. They also sought for appointment of advocate commissioner to divide the property into four equal shares by metes and bounds and allot three shares to them.

ii) The plaintiffs claimed that they alongwith the defendant/respondent herein being daughters and sons of one Natesa Achari, thereby they are entitled to their shares in the suit property originally owned by their deceased father.

iii) The plaintiffs further contended that while the third plaintiff used to stay at Bangalore on his occupation, plaintiffs 1 and 2 were at their respective town alongwith their family and taking advantage of the situation, the defendant, viz., their brother attempts to usurp the suit property entirely by alienating the same and thereby they sought for the relief.

iv) The plaintiffs also contended that taking advantage of the dispute between the third plaintiff and his wife, the defendant had obtained for a general power of attorney in favour of his wife, issued



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by the wife of the third plaintiff and in turn, the property was registered in favour of the defendant by his wife and that the third plaintiff's wife has no right to execute any power of attorney in favour of the wife of the defendant and thereby such power of attorney will not bind the third plaintiff and plaintiffs 1 and 2 are not concerned about the same.

v) Finding that amenable partition was not possible, the plaintiffs had filed the suit for partition and separate possession of their 3/4 share in the suit property.

vi) The defendant having remained absent, an ex parte decree came to be passed on 2.8.2009 and final decree was also passed on 4.12.2013 in I.A.No.765 of 2010 filed by the revision petitioners/decreed holders, allotting respective shares to each plaintiff on the basis of the Report filed by the Advocate Commissioner and the Taluk Surveyor.

vii) At this stage, the revision petitioners had come up with I.A.No.1 of 2022 contending that when they intended to transfer patta, they came to know that the survey number of the suit property was wrongly mentioned in the plaint as "**S.No.216/3A**" instead of "**S.No.216/30A**" due to typographical error and that error has



reflected in the preliminary decree, application in I.A.No.765 of 2020 for passing final decree and final decree and thereby they knocked the doors of the court below for rectifying the error with regard to the Survey Number.

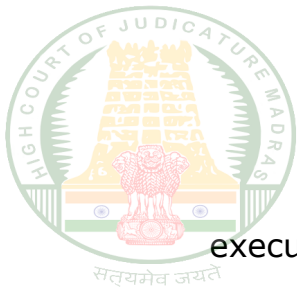
viii) The defendant had filed counter affidavit contending as under:-

a) The amendment sought for by the plaintiffs is not maintainable as it has been filed after a period of 13 years of disposal of the suit and that too during the pendency of an execution petition.

b) The plaintiffs have suppressed the pendency of three execution petitions filed already filed by them in E.P.Nos.4 to 6 of 2022 and the petitions in E.A.Nos.151 to 153 of 2022 filed by the defendant under Section 47 of CPC.

c) The possession of the suit property having not yet been handed over to the plaintiffs, the averment that the plaintiffs had come across the error with regard to the survey number of the suit property when they tried for patta transfer is not acceptable.

d) The survey number of the suit property having been mentioned as S.No.216/3A in the plaint, the plaintiffs have fraudulently amended the survey number as S.No.216/30A in the



execution petition and the same has been challenged by the defendant in the application filed under Section 47, which is still pending and thus, the application filed by them to amend the survey number is not maintainable.

e) The third plaintiff's wife Malliga had already sold the share of the third plaintiff to the defendant vide Doc.No.4559/2002 dated 12.12.2002 itself registered at SRO, Avadi and thus, the decree itself is an unexecutable one, without any prayer for declaration challenging the said sale deed.

f) The plaintiffs are not entitled for the indulgence of the court as they had played fraud on the court by suppressing the execution of a settlement document vide Doc.No.1338/2021 registered at SRO, Avadi by the third plaintiff in favour of one Kalyani pretending to be his wife.

ix) The court below, having found that the plaintiffs have filed the petition seeking to amend the survey number in respect of the suit property after a delay of 9 years without any documentary evidence to support their case and also suppressing the pendency of the previous execution petitions filed by them, dismissed the petition. Aggrieved against the same, the present civil revision petition has been filed by the plaintiffs.

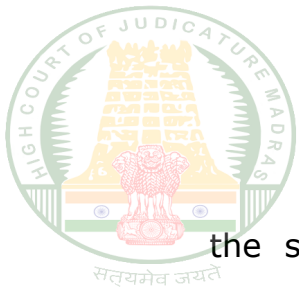


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3. Heard Mr.R.Prabakar, learned counsel appearing for the revision petitioners and Mr.M.L.Ravi, learned counsel for the respondent on the issue and perused the materials available on record.

4. While it is the case of the revision petitioners/plaintiffs that the suit property is an ancestral property belonging to the plaintiffs as well as the defendant and there is no dispute with regard to its identity, however, only due to oversight, the error with regard to survey number of the suit property had crept in and the amendment of the same would not be prejudicial to the interest of the respondent/defendant, it has been vehemently opposed by the defendant/respondent only on the ground that it cannot be permitted after such a long delay and at the stage of execution of the decree.

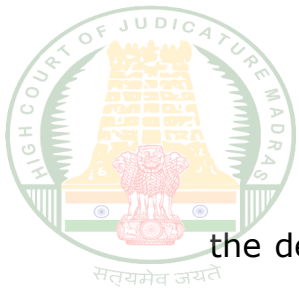
5. There is no dispute that the amendment has been sought for by the plaintiffs after lapse of about 13 years from the date of passing of preliminary decree and about 9 years from the date of passing of final decree. The suit being one for partition and separate possession of the suit property among the brothers and sisters, proper division of



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the suit property by metes and bounds could be the only object supposed to be achieved to construe that substantial justice has been rendered.

6. On perusal of the materials available on record, this court feels that certain factual aspects would enlighten the issue. The suit for partition and separate possession of the suit property, having been filed by the plaintiffs in the year 2009, has been, peculiarly, left to be decided ex parte by the defendant, who happens to be their own brother. However, he has chosen to raise all his opposition only at the stage of execution. Even according to the defendant/respondent, he had filed the application under Section 47 of CPC only in the year 2022 after noticing that the plaintiffs had sought for amendment of the survey number in respect of the suit property. Further, the defendant/respondent has chosen to oppose the amendment sought for by the plaintiff on the ground of delay and certain feeble grounds viz., suppression of execution of some documents by the wife of the third plaintiff and altering the survey number in the execution petition, which are not at all concerned with the amendment of survey number sought for by the plaintiffs. In such circumstances, the opposition of



the defendant/respondent for the amendment assumes no significance for deciding the question of sustainability of the amendment sought for.

7. What is left to be decided is whether the amendment sought for by the plaintiffs has to be necessarily allowed or not for rendering substantial justice. It appears that the suit property is an ancestral property. The plaintiffs claim their share in the same. The defendant is none but their brother. There appears to be no dispute over the identity of the suit property.

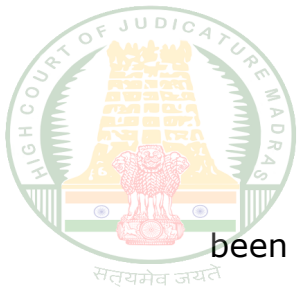
8. Obviously, the plaintiffs have taken a stand as if the defendant had fraudulently made some alienation in respect of the share of the third plaintiff through a general power of attorney given by the wife of the third plaintiff and such a transaction is not binding on them as the wife of the third plaintiff has no right at all to alienate the share of the third plaintiff. Such a stand has been left unchallenged by the defendant by remaining ex parte for the reasons best known to him. Now, after an application has been filed by the plaintiffs/deGREE holders in the year 2022 to carry out the typographical error crept in the



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material records, the defendant/judgment debtor, who had remained silent for all those years, leaving the preliminary decree and final decree to be passed ex parte, probably, having understood the adverse consequences that could follow in execution of the decree with wrong survey number, was biding his time and had chosen to challenge the Application for amendment only with an intention to prevent the plaintiffs from enjoying the fruits of the decree. What could not be achieved by defending the suit is being tried to be achieved by the defendant merely by opposing the amendment sought for by the plaintiffs.

9. In the event of allowing the application for amendment sought for by the plaintiffs, no prejudice could be caused to the defendant/respondent as the amendment does not alter the nature of suit or cause of action, whereas, if it is not allowed, the decree passed in the suit would become ineffective. It is moreso, when the Report of the Taluk Surveyor, which formed part and parcel of the final decree dated 4.12.2013, reflects the correct survey number viz., S.No.216/30A and also the new survey number viz., 650/22 after the suit property having been identified, however, the final decree has



been passed mentioning only the wrong survey number viz.,
S.No.216/3A with a glaring discrepancy.

10. What remains to be considered is whether the amendment sought for by the plaintiff after the final decree has been passed could be allowed or not. Relying on the decision in **Basavaraj vs. Indira** (2024) 3 SCC 705, the learned counsel for the respondent/defendant would contend that if the amendment is allowed, it would change the nature of suit and thereby giving rise to a fresh cause of action and thus, it cannot be allowed ignoring the concept of limitation.

11. But, in the case on hand, only the survey number of the suit property, which has been wrongly mentioned in the plaint due to typographical error, is sought to be amended without changing any cause of action. It could not be construed that any prejudice would be caused to the respondent/defendant in the event of allowing such amendment, whereas rejection of such a claim would make the final decree itself ineffective.



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12. Possible failure of justice in the event of refusal to permit the amendment has been predominantly considered by a Full Bench of the Apex Court in **Sajjan Kumar v. Ram Kishan**, (2005) 13 SCC 89 despite the fact that the plaintiff was not sufficiently diligent when the error in question was pointed out in the written statement and the amendment sought for was allowed. The relevant portion of the decision is extracted hereunder for ready reference:-

"5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the



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written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit."

13. No doubt, the revision petitioners/plaintiffs in the case on hand have come up with the prayer to amend the survey number after the final decree has been passed. So far as consideration of amendment sought for at a very belated stage is concerned, in ***Peethani Suryanarayana v. Repaka Venkata Ramana Kishore***, (2009) 11 SCC 308, a Division Bench of the Apex Court, while dealing with an appeal challenging the amendment ordered with regard to substitution of Town Survey Number after the final decree was passed, has held as under:-

"9. The factual matrix involved in the matter, as noticed hereinbefore, is not in dispute. It is also not in dispute that in the plaint the suit land was described as



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Revisional Survey No. 165. The village became a part of the municipality, by reason whereof a new town survey was assigned to the suit land being Town Survey No. 463. However, in the plaint and consequently in the preliminary decree as also in the final decree, Town Survey No. 462 was mistakenly mentioned, which was evidently a typographical mistake.

10. *The power of the court to allow such an application for amendment of the plaint is neither in doubt nor in dispute. Such a wide power on the part of the court is circumscribed by two factors viz. (i) the application must be bona fide; (ii) the same should not cause injustice to the other side; and (iii) it should not affect the right already accrued to the defendants.*

.....

18. *There cannot be any doubt whatsoever that the principles of natural justice are required to be complied with. But, in a case of this nature, the same would be*



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an empty formality. The facts are not disputed. The identity of the suit land has not been changed. It is not a case where, as submitted by Mr.Mahabir Singh, one land is being substituted by another. The fact that Town Survey No.463 is a joint family property is not in dispute. As indicated hereinbefore, it is the same plot which was the subject-matter of sale and only in respect thereof the appellants herein could claim partition. The appellants have also furthermore not been able to show as to how and in what manner they have been prejudiced."

14. Further, in the case on hand, the Report of the Taluk Surveyor, which forms part and parcel of the final decree specifically mentions not only the correct survey number but also the new survey number on identifying the suit property. Therefore, it is clear that there is no dispute over the identification of the suit property, rather, it matches only with correct survey number.

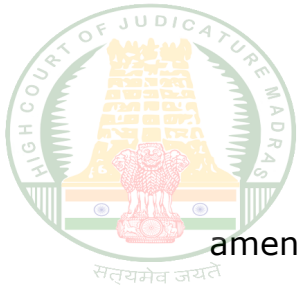


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15. It is the settled law that the proper boundaries will prevail over the measurement and survey number, which has been reaffirmed in **Subhaga v. Shobha** (2006) 5 SCC 466, wherein it has been held as under:-

" ... a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail."

16. Considering the facts and circumstances of the case in the light of the above decisions, this court finds that the amendment sought for by the revision petitioners/plaintiffs needs to be allowed for rendering substantial justice and thereby the order passed by the court below rejecting the application filed by the plaintiffs seeking amendment is set aside. The civil revision petition stands allowed. The revision petitioners/plaintiffs are permitted to carry out necessary amendment in the plaint with regard to survey number and file the



amended copy of the plaint and on receipt of the same, the court below shall carry out the necessary amendment in the preliminary decree and the final decree. No costs.

16.06.2025.

Index: Yes/No.
Internet: Yes/No.
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To

Subordinate Judge,
Poonamallee.



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A.D.JAGADISH CHANDIRA, J.

Ssk.

P.D. ORDER in
C.R.P.No.2376 of 2023

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