

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2016

C O R A M

THE HON 'BLE Dr. JUSTICE S.VIMALA

Civil Revision Petition (NPD) No.2003 of 2015
and
M.P.No.1 of 2015

1. Sundari @ Selvam
2. Jayalakshmi
3. Ramane
4. Latchumanan ... Petitioners / Defendants

Vs

1. Sudha
2. Rajesh ... Respondents / Plaintiffs

Prayer : Petition filed under Section 115 of the Code of Civil Procedure to set aside the order and decree dated 26/3/2015 passed in I.A.No.111/2015 in Un.No.A.S.No.---/2015 on the file of the Court of Principal District Judge at Pondicherry and directed the Court below to number the Appeal Suit and dispose the same on merits.

For Petitioners ... Mr.K.Sasindran

For respondents ... Mr.D.Senthil Kumar

O R D E R

This Civil Revision Petition has been filed praying to set aside the fair and decreetal order, dated 26/3/2015, passed in

I.A.No.111/2015, in unnumbered A.S.No.---/2015, on the file of the Court of Principal District Judge, Pondicherry and directed the Court below to number the Appeal Suit and dispose the same on merits.

2. Originally, the respondents herein as plaintiffs, filed a suit for partition of the properties, claiming their 2/6th share in the entire items of the property. Subsequently, preliminary decree, dated 18/3/2013 was passed by the Principal Sub-Judge, Puducherry. The defendants preferred an appeal, challenging the decree and judgment passed in O.S.No.149 of 2010 and while filing the appeal, they filed an application, to condone the delay of 631 days in preferring the appeal. That application came to be dismissed by order dated 26/3/2015. Challenging the same, this Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioners would submit that there is a need to amend the description of the property, and also to add certain items of the properties and if that is considered by the trial Court, there is no need to press the appeal. The learned counsel appearing for the revision petitioners filed a copy of the application, to be presented to the trial Court, seeking amendment of the decree (to include certain items of the properties).

4. The learned counsel appearing for the respondents submits that they have no objection to include these items of the properties in the decree.

5. As per the decision reported in 1961 (2) SCR 918 (Jagat Dhish Bhargava vs. Jawahar Lal Bhargava), there is nothing in the Civil Procedure Code, which prohibits the passing of more than one preliminary decree in a partition suit, if circumstances justify it and if it is convenient and advantageous to do so. However, passing of the second preliminary decree at this stage is not essential as both the parties agreed for inclusion of the properties.

6. Therefore, in view of the subsequent development, the earlier decree passed is hereby set aside and the Civil Revision Petition is allowed and the matter is remitted back to the trial Court, to consider the application for amendment which is forwarded to the trial Court and to pass orders in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

17/2/2016

mvs

Note: Issue order copy on 29.03.2016

S.VIMALA,J.

mvs

To

1. The Principal District Judge, Pondicherry

C.R.P.(NPD)No.2003 of 2015

17/2/2016