

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.06.2016

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1062 of 2016 &

C.M.P.No.5877 of 2016

Nagalingam

... Petitioner

v.

1.Gowriammal

2.Barani (minor)
Rep. By her mother and natural guardian
Gowriammal

3.Selvarani

4.Devaraj

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Docket Order for Rejection of Memo dated 03.09.2015 filed in I.A.No.1403 of 2004 in O.S.No.259 of 1997 on the file of Principal District Munsif at Kancheepuram.

For Petitioner : Mr.S.Srinivasan

ORDER

Challenging the order passed by the Principal District Munsif, Kancheepuram in the memo filed in O.S.No.259 of 1997, the second defendant has filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.259 of 1997 on the file of Principal District Munsif Court, Kancheepuram, for partition.

3. After contest, the Trial Court passed a preliminary decree on 29.11.2002.

4. Thereafter, after a decade, the second defendant filed a memo to correct the alleged clerical error in the judgment and decree passed in O.S.No.259 of 1997. Further, the second defendant also filed an application in I.A.No.342 of 2010 in O.S.No.259 of 1997 to keep the final decree proceedings in abeyance till the clerical error in the preliminary decree is rectified.

5. The learned counsel appearing for the petitioner submitted that the Trial Court erred in passing a preliminary decree allotting 5/12th share

instead of 5/18th share.

6. On a perusal of the preliminary decree and the judgment passed in O.S.No.259 of 1997, it could be seen that the plaintiffs have sought for partition in respect of 5/18th share in their favour. However, the Trial Court, had decreed the suit and passed a preliminary decree allotting 5/12th share in favour of the plaintiffs. That finding given by the Trial Court can not be treated as clerical error and it is the finding given by the Trial Court. When the parties are aggrieved over the findings of the Trial Court, the remedy open to the revision petitioner is to file an appeal and not to file a memo for modifying the shares allotted to the plaintiffs.

7. It is also pertinent to note that the second defendant also filed an application in I.A.No.342 of 2010 in O.S.No.259 of 1997 to keep the final decree proceedings in abeyance till the clerical error is rectified. The Trial Court erroneously allowed the application.

8. I do not find any merits in the memo filed by the second defendant before the Trial Court for modifying the shares of the parties. In the absence of any appeal filed by the parties, the memo is liable to be rejected, which was rightly rejected by the Trial Court, but, on different grounds. After the rejection of the memo, I do not find any merits in the application in I.A.No.342 of 2010 in O.S.No.259 of 1997, which was filed to keep the final decree proceedings in abeyance till the disposal of the memo filed by the

second defendant.

9. Since the memo itself has been rejected, the order passed in I.A.No.342 of 2010 in O.S.No.259 of 1997 is liable to be set aside. Accordingly, the same is set aside. The Trial Court is directed to proceed with the final decree application and decide the same on merits and in accordance with law.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2016

Index : Yes/No

Rj

To

The Principal District Munsif Court
Kancheepuram.

M. DURAISWAMY,J.,

Rj

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