

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.503 of 2016

and

C.M.P.No.2594 of 2016

Mrs.Mumtaz

... Petitioner

vs.

Mrs.Fathima Bi (deceased)
1.Mohammed Ghouse
2.Mohammed Ali
Mohammed Ismail (deceased)
3.Mrs.Arifa
4.Mrs.Zubaida
5.Mohammed Bilal
6.Mrs.Mumtaz
Mrs.Kulsum Bi (deceased)
7.Mrs.Saramma
8.Ghouse Mohideen
9.S.H.Haju
10.Ayesha Ammal
11.Mohammed Yacoob
12.Ms.M.Saleema
13.M.Mustafa
14.M.Murthaza
15.Mohamed Syed alias Moulana
16.Abdul Samad
17.Mrs.Aleema
18.Mrs.Saira
19.Mrs.B.Fathima alias Farzana
20.Mrs.Shameena
Abdul Hakeem (deceased)
Abdul Azeez (deceased)
Mohammed Pitchai (deceased)
Mohammed Salith (deceased)
Mohammed Hussain (deceased)
M.Abdul Hameed (deceased)
M.Abdul Rasheed (deceased)
21.Mrs.Fathima Bi
22.Mrs.Khathija Bi
23.Mrs.M.Sabira Bi
24.Mrs.Zulaikha Bi
25.M.Niyamuthullah

26.M.Mohammed Yousuff
 27.M.Mohammed Rafi
 28.Mrs.Razeena alias Zaitoon
 29.Zubair Ahmed
 30.Mrs.Dawood Bi
 31.A.Abdul Raheem
 32.Mrs.Maimoona
 33.Mrs.Balkhees
 34.Mrs.Zainab
 35.Mrs.Mariyam
 36.Abdul Kareem
 37.Abdul Gafoor
 38.Sultan
 29.Abdu Backer Siddique
 40.Mrs.Jameela Bi
 41.Abdul Sattar
 42.Mrs.Shameem
 43.Abdul Wahab
 44.Mrs.Farida
 45.Mrs.Zahida
 46.Mohammed Nazir
 47.Mrs.Noor Jahan
 48.Mrs.Tajunnisa
 49.Mrs.Humayun alias Farida
 50.Mrs.Shamshad Begum
 51.Shahul Hameed alias Sait
 52.Mrs.Zaibunnissa
 53.Mrs.Haseena Banu
 54.Khaleelur Rahman
 55.Mrs.Zehara Banu
 56.Mrs.Nasreen Banu
 57.Mrs.Mumtaz Begum
 58.Mujeebur Rahman
 59.Mrs.Afroze Rasheed
 60.Mohammed Rizwan
 61.Mrs.Sabitha Fathima
 62.Mrs.Sayeeda Fathima
 63.Mohammed Irfan
 64.Mohammed Imran
 65.Mohammed Usman

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the II Assistant Judge, City Civil Court, Chennai dated 05.01.2016 made in I.A.No.17034 of 2015 in I.A.No.20218 of 1986 in O.S.No.2331 of 1981.

For Petitioner : Mr.Praveen Alexander

ORDER

This civil revision petition has been filed under Article 227 of the Constitution of India questioning the legality and sustainability of the order dated 05.01.2016 passed by the learned Second Assistant Judge, City Civil Court, Chennai made in I.A.No.17034 of 2015 in I.A.No.20218 of 1986 in O.S.No.2331 of 1981 on the file of the said court. The matter stands listed today for admission. The arguments advanced by Mr.Praveen Alexander, learned counsel for the petitioner are heard. The certified copy of the impugned order, grounds of revision and copies of other documents produced in the form of typed set of papers are perused.

2. The 15th defendant in O.S.No.2331 of 1981 on the file of the II Assistant Judge, City Civil Court, Chennai, is the petitioner herein. The above said suit came to be filed by one M.Kulsum Bi (now deceased) against M.Abdul Hakeem and others for partition and separate possession. On the death of the first plaintiff Kulsum Bi, plaintiffs 2 to 16 were impleaded as her legal representatives. The trial of the suit resulted in a preliminary decree and subsequently in I.A.No.20218/1986, a final decree came to be passed, in which except one property, other properties were divided and allotted to the parties. One property was found to be incapable of partition and hence it was directed to be sold so that the sale proceeds could be divided among the sharers. Accordingly, a Receiver was appointed and the Receiver realised a net sum of Rs.2,64,26,160/- by the sale of the said property. The husband of the petitioner herein by name Mohamed A. Ismail, was held to be entitled to 2/11 shares. Unfortunately, the husband of the petitioner Mohamed A. Ismail died

before the amount could be distributed among the sharers as per the shares declared in the final decree dated 30.05.2015.

3. After his death, the petitioner herein, being his wife, obtained a Legal-heir certificate from the Tahsildar as if she alone is the legal heir of deceased Mohamed A. Ismail, claimed the entire share of her husband in the above said amount and obtained a cheque from the court for a sum of Rs.6,55,387/-. Before ever she could encash the cheque, the other persons claiming to be the legal heirs in their capacity either as sharers or residuaries, claimed 27/36 share in the properties left by the above said Mohamed A. Ismail and filed an application in I.A.No.17034/2015 to release their shares in the share of late Ismail in the amount realised by the sale of the said property. Pursuant to the filing of such application, the cheque was countermanded by issuing instructions to the bank not to honour the same. Thereafter, an enquiry was conducted in the said application and by the impugned order dated 05.01.2016, the learned trial Judge directed disbursement of the amount to the concerned parties in the following ratio:

(1) Mumtaz (W/o.Mohammed Ismail) 1/4th share	9/36
(2) A.Mohammed Ghouse	6/36
(3) Mohammed Allem	6/36
(4) A.Bilai	6/36
(5) Mrs.Mumtaz w/o M.J.Abdul Samad	3/36
(6) Mrs.Zubaida, w/o.A.K.Gulam	3/36
(7) Mrs.Arifa w/o M.J.Ameen	3/36

4. The said decision was taken on the basis that the petitioner in the revision being the wife of the deceased was entitled to 1/4 share, whereas the remainder would go to his brothers and sisters, the males taking double the

shares as that of the females. The learned counsel for the petitioner is not in a position to contend that the shares worked out by the court below is not in accordance with the Personal Law of the parties. Learned counsel for the petitioner also admits the fact that the petitioner being the wife of the deceased Mohamed A. Ismail, is entitled to $1/4$ equivalent to $9/36$ shares, whereas the balance shall go to his brothers and sisters, as indicated in the order. However, the learned counsel for the petitioner made a meek attempt to contend that the others having not chosen to obtain a Legal-heir certificate or succession certificate, would not be entitled to get payment out of their shares. The said contention cannot be countenanced.

5. Yet another contention is sought to be raised by the learned counsel for the petitioner to the effect that only after setting apart a portion of the estate of deceased A. Ismail towards his funeral expenses and to discharge his debts, the remainder shall be distributed among the legal heirs (sharers and residuaries). Of course the said contention may be tenable provided the petitioner has taken a stand that she had incurred expenditure from her own pocket for the funeral expenses of her husband and not from the savings of her husband or that there are un-discharged debts left by her husband Mohamed A. Ismail.

6. In the counter affidavit filed in I.A.No.17034/2015, she has not referred to any amount spent by her from her own funds for the funeral expenses of her husband. She has also failed to make any averment as if any amount was borrowed by her from anybody for meeting the funeral expenses of her husband. There is no averment that her husband left un-discharged debts. No averment has been made to the effect that the husband of the petitioner left

any legacy. Under the said circumstances, the trial court has not committed any error or mistake in holding the petitioner and the other legal heirs of Mohamed A. Ismail, who are respondents 1 to 6 in the revision petition to be entitled to share the amount in the ratio indicated above in accordance with the Personal Law governing them. This court does not find any valid ground for interfering with the impugned order of the trial court. There is no merit in the revision and the revision deserves to be dismissed at the threshold.

Accordingly, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

24.03.2016

Index : Yes/No
Internet : Yes
asr

To

The II Asssitant Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR, J.

asr/-

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