



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) Nos.100 to 102 of 2014 (NPD)

and

M.P (MD) No.1 of 2014

V.Sivanappan

.. Petitioner/Respondent/Plaintiff
in all the C.R.Ps.

Vs.

1.V.Pavanasam
2.K.Muthusivam
3.K.Muthukumar

..Respondents/Petitioners /
Defendants 2,6 and 7
in C.R.P (MD) No.100 2014

1.V.Pavanasam
2.V.Murugesan
3.K.Muthusivam
4.K.Muthukumar

..Respondents/Respondets/
Defendants 2,4,6&7
in C.R.P (MD) No.101 of 2014

1.V.Murugesan

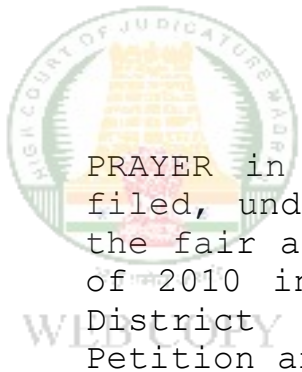
.. 1st Respondent/Petitioner/4th
Defendant

2.V.Pavanasam
3.K.Muthusivam
4.K.Muthukumar

.. Respondent2to4/Respondents 2 to 4
/Defendant 2,6 & 7
in C.R.P. (MD) No.102 of 2014

PRAYER in C.R.P.(MD) No.100 of 2014: Civil Revision Petitions are filed, under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order, dated 12.09.2011 passed in I.A.No.79 of 2008 in O.S.No.936 of 1990, on the file of the I Additional District Munsif, Nagercoil by allowing this Civil Revision Petition and to grant such other relief.

PRAYER in C.R.P(MD) No.101 of 2014: Civil Revision Petitions are filed, under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order, dated 10.08.2011 passed in I.A.No.486 of 2008 in O.S.No.936 of 1990, on the file of the I Additional District Munsif, Nagercoil by allowing this Civil Revision Petition and to grant such other relief.



PRAYER in C.R.P(MD)No.102 of 2014: Civil Revision Petitions are filed, under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order, dated 10.08.2011 passed in I.A.No.607 of 2010 in O.S.No.936 of 1990, on the file of the I Additional District Munsif, Nagercoil by allowing this Civil Revision Petition and to grant such other relief.

For Petitioner in all CRP's : Mr.S.Subbiah
For Respondents in all CRP's : Mr.D.Nallathambi

C O M M O N O R D E R

The issues involved in all the three Civil Revision Petitions are interlinked. Hence, common order is passed in all the three revision petitions. The parties are referred to plaintiff and defendants.

2.The petitioner in all the Civil Revision Petitions is the plaintiff in O.S.No.936 of 1990 filed by him for partition against his mother and brothers. A preliminary decree was passed on 24.09.1993 allotting 6/25th share to him. He filed I.A.No.477 of 2001 for appointment of Advocate Commissioner and for passing of final decree. Advocate Commissioner was also appointed and the Advocate Commissioner demarcated the share of the petitioner and a final decree was passed on 15.09.2003. The petitioner took the possession of the share allotted to him.

3.The third defendant Mr.V.Kathiresan died and his legal heirs were impleaded as defendants 6 & 7. The defendants 1,2,6 & 7 filed I.A.No.79 of 2008 for passing of Supplementary Preliminary Decree declaring their share in the suit property. They have stated that pending suit, they did not pay the Court fee and they did not seek the demarcation of their share. In I.A.No.79 of 2008, they have paid Court fee for passing of Supplementary Preliminary Decree with regard to their share in the suit property as per the earlier preliminary decree, dated 24.09.1993. The fourth defendant, who was the second respondent in I.A.No.79 of 2008 filed counter statement and stated that he has no objection for passing of Supplementary Preliminary Decree as prayed for by the petitioner.

4.The Petitioner filed I.A.No.486 of 2010 for passing of Supplementary Preliminary Decree stating that the first defendant/first petitioner in I.A.No.79 of 2008, who is the mother of the petitioner has settled her 1/25th share in his favour by the settlement deed, dated 30.09.2004 bearing document No.1837/2004. He prayed for Supplementary Preliminary Decree being passed in his favour allotting 1/25th being the share of his mother to him and he has no objection for passing of Supplementary Preliminary Decree to other respondents as per earlier preliminary decree, dated 24.09.1993.



5.The fourth defendant filed I.A.No.607 of 2010 against the petitioner and defendants 2,6 & 7 seeking Supplementary Preliminary Decree for allotting 6/25th share to him. He has stated that he has paid Court Fee. The petitioner filed counter statement and stated that the door number mentioned as 62 by the fourth defendant in the application is not correct and correct door number is 61 and he has no objection for Supplementary Preliminary Decree being passed in favour of the fourth defendant allotting 6/25th share and also prayed for passing of Supplementary Preliminary Decree for 1/25th share in his favour being the share of his mother, which was settled on him by the settlement deed, dated 30.09.2004 bearing document No.1837/2004.

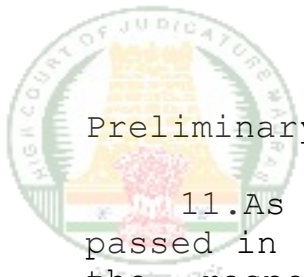
6.The defendants, who are the respondents in I.A.No.486 of 2010 opposed the said application stating that the alleged settlement deed, dated 30.09.2004 is not a genuine one. The first defendant Krishnammal did not execute the settlement deed in favour of the petitioner. If really she executed a settlement deed, dated 30.09.2004 she would not have filed I.A.No.79 of 2008 for passing of Supplementary Preliminary Decree claiming 1/25th share in her favour.

7.The learned Judge considered all the three applications and by separate orders all dated 10.08.2011 and dismissed all the three applications holding that after passing of final decree, no Supplementary Preliminary Decree can be passed. In respect of claim of the petitioner with regard to 1/25th share in I.A.No.486 of 2010 based on the settlement is concerned, the learned Judge has held that genuineness of the settlement deed is disputed by the defendants and therefore, the petitioner has to work out his remedy before the appropriate forum.

8.Against the said three orders, the petitioner has come out with the present Civil Revision Petitions.

9.The learned counsel for the petitioner submitted that the learned Judge erred in holding that no Supplementary Preliminary Decree can be passed after passing of final decree. Any number of Preliminary Decree can be passed taking into consideration the changed circumstances. The learned Judge has not properly considered the Judgement of Hon'ble Apex Court reported in **2011(9) SCC (Ganduri Koteswaramma & another vs. Chakiri Yanadi and another)**.

10.The learned counsel appearing for the respondents 1 to 4 submitted that the learned Judge erred in dismissing the I.A.No.79 of 2008 and 607 of 2010 on the ground that no Supplementary Preliminary Decree can be passed after passing of final decree. The learned Judge ought to have seen that any number of



Preliminary Decree can be passed.

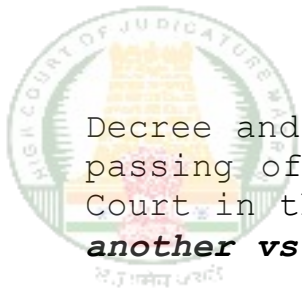
11. As far as C.R.P.(MD)No.101 of 2014 filed against the order passed in I.A.No.486 of 2010 is concerned, the learned counsel for the respondents submitted that the settlement deed, dated 30.09.2004 put forth by petitioner is not executed by the first defendant and it is not a genuine one as could be seen in the averments made by the Krishnammal/1st petitioner in I.A.No.79 of 2008 filed by her claiming 1/25th share. If she had really executed settlement deed on 30.09.2004, she would not have filed I.A.No.79 of 2008 claiming 1/25th share.

12. The learned Judge rightly held that genuineness of the settlement deed cannot be decided in the application for Supplementary Preliminary Decree and prayed for dismissal of C.R.P.(MD)No.101 of 2014 and allowing the other C.R.P(MD)No.100 and 102 of 2014.

13. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the entire materials available on record.

14. The petitioners in I.A.No.79 of 2008 and I.A.No.607 of 2010 have not filed any C.R.P., challenging the order of learned Judge dismissing their application. The petitioner has no locus-standi to file the C.R.P., against the order passed in I.A.No.79 of 2008 and I.A.No.607 of 2010.

15. As far as I.A.No.486 of 2010 is concerned, the petitioner is claiming 1/25th share of his mother as per settlement deed dated 30.09.2004 alleged to have been executed by his mother. The respondent in the said application have disputed the genuineness of the said settlement. The learned Judge has rightly held that the genuineness of the settlement deed is disputed by the defendants and therefore cannot be decided in the application for passing of supplementary preliminary decree and it is for the petitioner to work out his remedy before the appropriate forum. Further the Hon'ble Apex Court in the Judgment reported in **1991 (3) SCC 647 (S.Sai Reddy vs. S.Narayana Reddy and others)** has held that final decree must be in conformity with preliminary decree. If any party wants alteration and change of preliminary decree, only course open to him is to file an appeal. The petitioner filed I.A.No.486 of 2009 seeking alteration of Preliminary Decree wherein he has been granted 6/25th share in the suit property. Now, he is claiming 1/25th share of his mother/first defendant based on the settlement deed, in addition to the share already allotted to him in the Preliminary Decree, dated 24.09.1993. As per the Judgments referred to above, I.A.No.486 of 2010 is not maintainable and is devoid of merits. Further, it is well settled that a suit for partition continues after passing of Preliminary



Decree and the proceedings in the suit get extinguished only after passing of final decree. It has been held so by the Hon'ble Apex Court in the judgment reported in **AIR 1967 SC 1470 (Phoolchand and another vs. Gopal Lal)**.

16. In the present case, final decree already been passed on 15.09.2003 in I.A.No.477 of 2001 therefore, the proceedings in partition suit got extinguished as held by the Hon'ble Apex Court in the judgment referred to above.

17. The learned Judge has exercised his power in proper perspective and dismissed all the applications giving cogent and valid reason and there is no illegality or irregularity warranting interference by this Court.

18. In view of the above observation, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To
The I Additional District Munsif,
Nagercoil.
+1 cc to Mr. D.NALLATHAMBI, ADVOCATE, SR NO.80783
+1 cc to Mr. S.SUBBIAH, ADVOCATE, SR NO.81167

Am
UM/GSV-SV/20.01.2017:5P-4C

C.R.P(MD)Nos.100 to 102 of 2014 (NPD)
14.12.2016