



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 13.06.2016

CORAM

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (MD) No.2286 of 2014

and

M.P (MD) No.1 of 2014

1.N.M.Nagoor Meeren

2.N.Najima Begam

.. Petitioners/Petitioners/
3rd Parties/3rd Parties

vs.

Anthonisamy (died)

A.L.Mary (died)

J.M.R.Julia (died)

1.A.Sampath Raj

2.A.Xavier Chander

3.A.Madeline Ramila Rani

4.A.Gerald Shantharaj

5.A.Nirmala Rani

6.A.Jaraldin Soundarajan .. Respondents 1to6/Respondents 1to9/
Respondents 2 to 7 not a party

7.Tamilselvan

8.Ramachandran @ Ravichandran

.. Respondents 7&8/Respondents 10&11/
Petitioners 1 & 2/Defendants 1 & 2

9.G.Jeyalakshmi

10.G.Vasantha

11.G.Jhansi Rani

.. Respondents 9to11/Respondents 12&14
/Petitioners 3 to 5 not a party

12.Pugalendhi

13.Pari

.. Respondents 12&13/Respondents 15&16/
Petitioners 6 & 7/Defendants 4 & 5

14.S.Rajeswari

15.S.Kavitha

16.T.Selvaraj

17.Saradha

18.Senthil

19.Manikanda

<https://hosevices.ecourts.gov.in/cases/>

20.S.Muthulakshmi

21.S.Muthulakshmi

22.K.Vanitha



23.M.Malarvizhi
24.S.Jothi
25.S.Yuvaraj

.. Respondents 14to25/Respondents 17 to 28/
Petitioners 8 to 19 not a party

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 20.06.2014 made in I.A.No.210 of 2014 in I.A.No.190 of 2012 in O.S.No.608 of 1980 on the file of the II-Additional Sub Court, Tiruchirappalli.

For Petitioners : Mr.A.Arumugam
for Mr.M.Siddharthan

For RR 1 to 5 : Mr.N.Vijayarajan

For RR 7 to 25 : Mr.P.Thiagarajan

For R - 6 : Deceased (steps due)

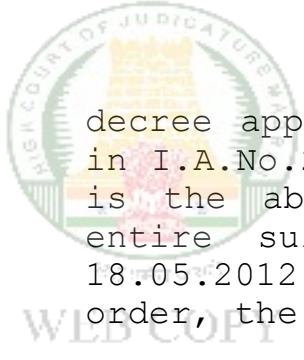
ORDER

This revision is directed against the order, dated 20.06.2014, passed by the II-Additional Sub Court, Tiruchirappalli in I.A.No.210 of 2014 in I.A.No.190 of 2012 in O.S.No.608 of 1980.

2. Originally one Anthonisamy and A.L.Mary instituted a suit in O.S.No.608 of 1980 before the Sub Court, Tiruchirappalli for partition claiming 8/35 share in the suit properties. In the suit, a preliminary decree was passed on 31.03.1984. Thereafter, a final decree application was filed by the plaintiffs in I.A.No.332 of 1985. The trial Court passed the final decree on 25.11.1987.

3. Aggrieved over the allotment of share in the final decree proceedings, an appeal was filed by the plaintiffs before the District Court, Tiruchirappalli in A.S.No.242 of 1989. The appeal was allowed in part by the Judgment and Decree, dated 30.11.1990. Challenging the decree passed in the Appeal Suit, an appeal was filed by the first plaintiff in S.A.No.1418 of 1992. This Court set aside the final decree and remanded the case to the first Appellate Court. Thereupon, a final decree was passed by the first Appellate Court on 30.06.2003 allotting specific share to the plaintiffs. The final decree passed in favour of the plaintiffs have reached finality, as the Judgment and Decree passed in A.S.No.242 of 1989, dated 30.06.2003 was not further challenged.

4. Based on the final decree, dated 30.06.2003, the legal heirs of the original plaintiffs have filed an Execution Petition in E.P.No.818 of 2004 before the I-Additional District Munsif Court, Tiruchirappalli. While so, a second final decree application was filed by the defendants 1 and 2 and the legal heirs of the other defendants viz., D4, D5, D7, D8, D10 and D11. In the final



decree application, the petitioners filed impleadment application in I.A.No.210 of 2014 contending that the sixth defendant-Satyavel is the absolute owner of the property and they purchased the entire suit property through a registered sale deed, dated 18.05.2012. The application was dismissed. Aggrieved over the order, the present revision is filed.

5. Mr.A.Arumugam, learned counsel appearing for the petitioners would submit that the suit property was originally owned by the Prince of Arcot Nawab Endowment and as per the orders of the settlement authorities and a subsequent compromise reached between the sixth defendant and the Prince of Arcot Nawab, the sixth defendant was the absolute owner of the property; that the respondents themselves admitted that the sixth defendant was having 8/35 share in the suit property and therefore, the petitioner is a proper and necessary party in the final decree proceedings and in the impleading petition, the rights of the parties cannot be decided.

6. The learned counsel further submitted that there is a vast difference between the legal heirs of the defendant and the legal representatives of the defendant. The legal representative would have wider terms and even the subsequent purchaser would be impleaded as legal representative.

7. The learned counsel for the petitioners has relied upon the following decisions in support of his contentions:-

i) Ramader Appala Narasinga Rao Vs. Chunduru Sarada reported in AIR 1976 Andhra Pradesh 226.

ii) Nanja Naicken Vs. Rangammal reported in 1972(2) MLJ 12.

iii) V.Sumathi and another Vs. D.Vedagiri and others reported in 2003 (3) CTC 329 and

iv) Amit Kumar Shaw and another Vs. Farida Khatoon and another reported in (2005) 11 SCC 403.

8. Per contra, the learned counsel appearing for the respondents 7 to 25 would submit that the suit came to be filed in the year 1980 and after contest, the preliminary decree was passed on 31.03.1984. The final decree application filed by the plaintiffs in I.A.No.332 of 1985 have reached finality, in view of the Judgment and Decree passed in A.S.No.242 of 1999, dated 30.06.2003. It is further submitted that the sixth defendant has filed a written statement in the suit admitting that the suit property is a joint family property and he is having 1/6th share in the suit property. However, the petitioners claim right over the entire property based on the sale deed executed by the persons claiming to be the legal representatives of the sixth defendant.



Since the sixth defendant was allotted only 8/35 share in the suit property, the purchaser of pendente lite cannot claim more share and therefore, the trial Court has rightly dismissed the application.

9. It is not in dispute that the suit was filed for partition and in the preliminary decree, the sixth defendant was allotted 8/35 share. The sixth defendant has not challenged the share allotted in the preliminary decree proceedings. So it has reached finality. It is also not in dispute that the plaintiffs filed I.A.No.332 of 1985 for passing final decree and in A.S.No.242 of 1989, specific share in the suit property was allotted to the original plaintiffs/Lrs of the respondents 1 to 5 herein.

10. According to the learned counsel for the respondents 1 to 5, the petitioners can claim only 8/35 share in the suit property. Since they claimed right over the entire suit property, the trial Court dismissed the application and they have no objection for the petitioners to claim 8/35 share in the suit property.

11. It is further contended by the learned counsel for the respondents 1 to 5 that since the specific share allotted to the plaintiffs, has become final, the petitioners cannot object delivery of possession in E.P.No.818 of 2004.

12. There is no quarrel with regard to the proportion that in the impleading application, the right of the parties cannot be decided and if the proposed party has any right in the suit property, they have to be impleaded as proper and necessary party to settle the issues involved in the suit. Since the preliminary decree has become final and the final decree passed in I.A.No.332 of 1985 has attained finality, the petitioner cannot re-open the entire issue claiming right over the entire property. Further, the respondents have no objection for allotment of 8/35 share to the petitioners in the suit property.

13. In view of the above facts, the order passed in I.A.No.210 of 2014 in I.A.No.190 of 2012 in O.S.No.608 of 1980 is set aside. It is made clear that the petitioners can claim only 8/35 share in the suit property and their claim over the entire property cannot be countenanced.

14. Taking into consideration the facts of this case, the **(*)I-Additional Subordinate Judge, Tiruchirappalli** is directed to deliver the possession of the properties to the respondents 1 to 5 as per the decree passed in A.S.No.242 of 1989 forthwith and if necessary, the Commissioner of Police, Tiruchirappalli is directed to provide police aid for taking possession of the share allotted



15. Accordingly, the Civil Revision Petition is ordered. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

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Sd/-

Assistant Registrar (T&P)

**(*)corrected as per the order of
this court dated 16.08.2016.**

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

**To be substituted to the order already
despatched as dated 05.08.2016.**

1.The II-Additional Sub Judge,
Tiruchirappalli.

2.The I-Additional District Munsif,
Tiruchirappalli.

**3.The I-Additional Subordinate Judge,
Tiruchirappalli.**

4.The Commissioner of Police,
Tiruchirappalli.

+1 CC to M/s.M.SIDDHARTHAN, Advocate, SR No.44671

+1 CC to M/s.M.Vijayarajan, Advocate, SR No.44863

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and

M.P (MD) No.1 of 2014

13.06.2016

SH/ARK-PV/SAR-III:05.08.2016:5P/6C

ps

SD/KP/24.08.2016/5P/7C