

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**CRP.PD.No.266 of 2017
and CMP.No.1173 of 2017**

Dhanusu

.. Petitioner

vs.

1.Settu @ Panchanathan
2.Pargunam
Janagammal (Died)
3.Vasuki
4.Thangamani
Sudeshnan(Died)
5.Chandrakasu
6.Pandian
7.Sambandam

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 18.11.2016 made in I.A.No.109 of 2016 in O.S.No.186 of 1989 on the file of the Principal District Munsif Court, Cuddalore.

For petitioner : Mr.G.Sivashakar

JUDGMENT

This Civil Revision Petition has been filed against the order dated 18.11.2016 passed in I.A.No.109 of 2016 in O.S.No.186 of 1989 by the learned

Principal District Munsif, Cuddalore.

2. The petitioner is the first defendant, respondents 1 and 2 are defendants 2 and 3, respondents 3 and 4 are defendants 5 and 6 and respondents 5 to 7 are the plaintiffs 1 to 3 in the suit in O.S.No.186 of 1989 filed for partition and separate possession. A preliminary decree was passed on 27.11.1990. Against which, the petitioner/first defendant filed an appeal in A.S.No.13 of 1991 before this Court against the respondents and others.

3. This Court by a Judgment and decree dated 04.09.2002 made in A.S.No.13 of 1991, modified the preliminary decree as follows:

- i) the findings of the Court below holding that Ex.B.16 Will is valid and binding, are set aside.
- ii) It is declared that the plaintiffs, defendants 1 to 3 and the deceased Krishnasamy Gounder are each entitled to an equal share in all the suit properties including the properties purchased in the name of the 7th defendant;
- iii) that the plaintiffs and defendants 1 to 6 are each entitled to a 1/9th share in the 1/7th share of the properties are allotted to Krishnasamy Gounder.

4. As per the preliminary decree, the respondents 5 to 7 had filed an application in I.A.No.1797 of 2005 in O.S.No.186 of 1989 on the file of the

Principal District Munsif Court, Cuddalore for passing of final decree and the same was passed on 16.03.2007. Thereafter, they had filed an execution petition in E.P.No.124 of 2008. The petitioner and his son opposed the execution petition. Finally, delivery was ordered on 01.08.2015 and they took possession of their share in the suit property. Thereafter, respondents 1 and 2 /defendants 2 and 3 filed I.A.No.109 of 2006 for appointment of Advocate Commissioner to inspect the suit properties with the help of a surveyor and divide them into 56 shares and allot 18 shares to the petitioners therein/ respondents 1 and 2 herein as per preliminary decree, from and out of the remaining items of suit properties by metes and bounds and file a report and plan, so as to pass a final decree in favour of respondents 5 to 7 and as against the petitioners and respondents 1 to 4. The petitioner/first defendant filed a counter affidavit wherein, it is stated that no preliminary decree was passed declaring the shares of defendants 2 and 3 in the suit properties and therefore, they are not entitled to get final decree and allotment of 18/56 shares in the remaining suit property.

5. The learned Judge, considering the averments made in the counter affidavit and Judgment and decree passed by this Court dated 04.09.2002 made in A.S.No.13 of 1991, allowed the application in I.A.No.109 of 2016 in O.S.No.186 of 1989 dated 18.11.2016 for appointing an Advocate Commissioner

to inspect the suit property, after giving notice to both parties and inspect the remaining items of suit properties with the help of a Surveyor to suggest 18/56 share to the petitioners /respondents 1 and 2 herein by metes and bounds and to file a report along with plan.

6. Against the said order dated 18.11.2016 made in I.A.No.109 of 2016 in O.S.No.186 of 1989, the present civil revision petition has been filed.

7. Heard both sides and perused the materials placed before this Court.

8. The grievance of the petitioner/first defendant is that the trial Court allowed the application for passing final decree without any preliminary decree declaring the shares of defendants 2 and 3 in the suit property.

9. From the materials on record, it is seen that the trial Court by the Judgment and decree dated 27.11.1990, passed a preliminary decree declaring the shares of the plaintiff. By the Judgment and decree dated 04.09.2002 in A.S.No.13 of 1991, this Court declared the shares of both plaintiff and defendants 2 and 3/respondents 1 and 2 herein. Based on the said Judgment and decree, the trial Court has allowed the application by the order impugned herein, in I.A.No.109 of 2016 in O.S.No.186 of 1989. This Court finds no reason

to interfere with the order, so passed by the Trial court.

10. In the result, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

10.04.2017

Index :Yes/No
Internet :Yes/No
kkd

To

The Principal District Munsif Court,
Cuddalore.

V.M.VELUMANI,J

kkd

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