



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2018

CORAM

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

C.R.P. (MD) No.1023 of 2014
and
C.M.P. (MD) No.6232 of 2018

1.Amar Banu Thayan

2.Nabisa Begum

... Petitioners

Vs.

1.M.Mohamed Ibrahim

2.M.Peer Mohammed

3.Mohamed Rafique

4.Rahamath Nisha

5.Amsath Raja

6.Ali Jabari

7.Faridha Begum

8.Sherfudeen

9.Sathakathulla

10.Amina @ Rabika

11.Jameena

12.Thakira

13.Jameela Begum

14.Sakkari Mohammed Ibrahim

15.Periya kattuva

16.Sheik Abdul Khader



18.Rajaram

19.Abdul Rahim

20.Kuppan

... Respondents

Prayer : Civil Revision Petition filed under Section Article 227 of Constitution of India, to allow the C.R.P. setting aside the Fair and Decreetal Order of the learned Principal Subordinate Judge, Dindigul dated 22.01.2014 in I.A.No.655 of 2012 in O.S.No.476 of 1971 and to dismiss the said I.A.

For Petitioners : Mr.Amar Babu Thayan, Petitioner

For R2 : Mr.R.Vijayakumar

ORDER

This Civil Revision Petition is filed challenging an order of the learned Principal Subordinate Judge, Dindigul, dated 22.01.2014 in I.A.No.655 of 2012 in O.S.No.476 of 1971.

2. A plaint was filed in O.S.No.476 of 1971 on the file of the Principal Subordinate Judge, Dindigul in terms of Order 7 Rule 1 of C.P.C, seeking a partition of the plaint A to C schedule properties in metes and bounds as per the calculation set out therein and to effect separate possession of the schedule properties.

3. A preliminary decree, dated 13.03.1979, in so far as it relates to the 1st and 2nd respondents before the Court being the LRs of the deceased D8 in the suit states as follows:

'That the 8th defendant be and is hereby declared to be entitled to partition and separate possession of half share in items 8 to A schedule.'

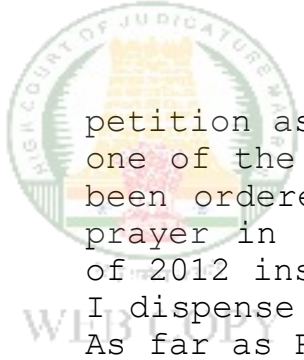
4.The above preliminary decree was modified in A.S.No.250 of 1982 by this Court. However, no modifications were effected as far as the present contesting respondents are concerned, being R1 and R2.

5. The legal heirs of the 8th defendant namely, R1 and R2 in the present Civil Revision petition, thereafter filed I.A.655 of 2012 seeking an order of appointment of an Advocate Commissioner to effect partition as well as allotment of their share of suit property, amounting, according to them to 15,159 1/4 sq.ft.

6.The learned Principal Subordinate Judge has, in the impugned order, dated 22.01.2014 directed the appointment of an Advocate Commissioner namely, one Mr.Joseph Sukumar, for inspecting the suit property and also sub-dividing the same as per the findings in the preliminary decree.

<https://hcservices.ecourts.gov.in/hcservices/>

7. I have heard Mr.Amar Banu Thayan appearing on behalf of himself as well as the second petitioner in the civil revision



petition as well as Mr.Vijayakumar, who is on caveat for R-2, who is one of the legal heirs of the 8th defendant in suit. No notice has been ordered as far as the other respondents are concerned as the prayer in this CRP addresses solely the order passed in I.A.No.655 of 2012 insofar as it relates to respondents 1 and 2 alone and thus, I dispense with notice as far as respondents 3 to 20 are concerned. As far as R-1 is concerned, who is the other legal heir of deceased D8 in suit, the brother of R-2 herein, in the light of the order in this CRP, no notice to him is necessary and I dispense with the same.

8.The main ground canvassed by the revision petitioner is to the effect that R1 and R2 are not entitled to the relief sought for by them in I.A.No.655 of 2012 as according to the petitioners, the claim for 15, 159 1/4 sq.ft. by R1 and R2 is incorrect and unsustainable. The exact allotment of the property is a matter to be decided after letting in evidence as well as consideration of the same by the Court, after hearing both sides.

9.I find however that the learned Principal Subordinate Judge, in deciding the prayer for the appointment of Advocate Commissioner and allotment of shares in the property, has ordered the same only as per the findings in the Preliminary Decree. The revision petitioner confirms and accepts the entitlement of R-1 and R-2 to the property to the extent of 11,250 sq. ft as per the Preliminary decree. Their claim for 15,159 ¼ sq.ft. in the suit property is what is objected to by the petitioners. However, insofar as the impugned order in I.A.No.655 of 2012 in O.S.No.476 of 1971 only allots shares to R1 and R2 the extent of Preliminary Decree, being 11,250 sq.ft., and in the light of the confirmation and admission of the petitioners that they have no quarrel with the allotment of 11,250 sq. ft to R1 and R2 as per the Preliminary decree, no prejudice has been caused to the revision petitioner.

10.The proceedings in suit are stated to be ongoing. The learned Principal Subordinate Judge, Dindigul, will dispose of the matter as expeditiously as possible and in any event, within a period of three months from the date of receipt of a copy of this order, after giving due opportunity to the parties.

11.This Civil Revision Petition is disposed of, in the above terms. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar(CS-IV)



To

The Principal Subordinate Judge,
Dindigul

+2cc to Mr.AMAR BANUTHAYAN, PARTY-IN-PERSON, SR.No. 72911

+1cc to Mr.R.VIJAYAKUMAR, Advocate, SR.No.72891

C.R.P. (MD) No.1023 of 2014
12.07.2018

GNS/PM

KK/RSK/14.08.2018/SAR-4/4P-5C