



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:14.06.2017
CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P. (MD) No.1144 of 2017
and
C.M.P. (MD) No.5236 of 2017

K.Sundaram

.. Petitioner

Vs.

Krishnamoorthy Chettiar (Died)

K.Chandrasekaran (Died)

1.K.Srinivasan

2.Janabai

3.Muralidharan

4.Ananthapadmanabhan

5.Dhandapani

.. Respondents

Prayer : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 13.08.2015 passed in I.A.No.32 of 2015 in I.A.No.97 of 2008 in O.S.No.379 of 1989, on the file of Subordinate Court, Palani.

For Petitioner : Mr.R.Nandakumar

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 13.08.2015, passed in I.A.No.32 of 2015 in I.A.No.97 of 2008 in O.S.No.379 of 1989, on the file of Subordinate Court, Palani.

2.Heard the learned counsel appearing for the revision petitioner.

3.In the suit for partition, preliminary decree has been passed as prayed in which, the revision petitioner, his father and two brothers were declared to be entitled for $\frac{1}{4}$ th share each in the suit property. After the preliminary decree, the father of the revision petitioner namely, Krishnamoorthy Chettiar (died) intestate.

4.Therefore, the revision petitioner has filed an application for amendment to the preliminary decree to the effect that $\frac{1}{4}$ th share of his father to be divided among the rest of the surviving legal representatives of the deceased Krishnamoorthy Chettiar.



5.The trial Court has rejected the said petition to amend the preliminary decree with an observation that the amendment sought cannot be made in the preliminary decree since the decree passed pursuant to the pleadings. The right of the revision petitioner in the share of the one of the defendants who died intestate, subsequent to the passing of a preliminary decree has to be worked out separately.

6.This Court finds no error or miscarriage of justice in the impugned order. The right of the revision petitioner is not foreclosed by dismissal of his petition. The revision petitioner is at liberty to lay claim of his share in the $\frac{1}{4}$ th portion of the deceased father, who died instate, provided, he could prove the same in the manner known to law or if admitted by the other ostensible descendants. It is open to the revision petitioner to workout his remedy in the final decree proceedings and canvas the merits of his case, if there is no other claimants except the respondents herein to the property of his late father Krishnamoorthy Chettiar.

7.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Court,
Palani.

MM/MRN

VB/KP/SAR2/03.07.2017/2P/2C

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