



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.06.2017

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

C.R.P. (MD) (NPD) No.118 of 2016

1.P.Chellammal
2.P.Sathiyaseelan
3.P.Anandhan

...Petitioners/Defendants 8,9,10

Vs.

1.Chandra Ammal
(Meenakshiammal, (died)
2.Muthusamy
(Ponnuchamy, (died)
3.Natarajan
4.Lingam
5.Varnam Ammal
6.Palaniammal

...1st Respondent/Plaintiff

... Respondents/Defendants 2,4,5,6,7

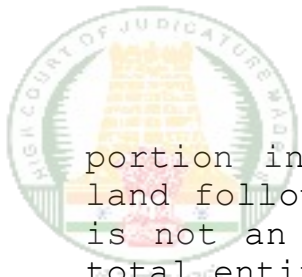
PRAYER: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order dated 05.11.2015 passed in I.A.No.465 of 2015 in I.A.No.118 of 2009, O.S.No.351 of 1989, on the file of the Sub-Court, Palani.

For Petitioners	:Mr.G.Prabhu Rajadurai
For Respondent	:Mr.G.Gomathi Sankar for R1. :R.Vijayakumar for RR 2,3,4 & 6

O R D E R

This Civil Revision Petition is directed against the dismissal of the amendment application filed by the defendants in the final decree proceedings initiated by the plaintiff. On plain reading of the amendment application, it appears that the defendants want to alter the respective shares of the parties and to include certain survey Nos.18/1 and 19. The Trial Court has rejected the said claim, on the ground that it cannot go beyond the final decree and include the properties, which were not the subject matter of the suit.

2. Now the revision Petitioner submits that pursuant to the preliminary decree, the Commissioner has filed a sketch and a report, wherein, the properties situated in survey Nos.18 and 19, in which the revision petitioners have $\frac{3}{4}$ shares on their own and in remaining $\frac{1}{4}$ share in the survey Nos.18/1 and 19, which they are entitled to inherit from their father Ponnusamy has not been properly apportioned marking $\frac{3}{4}$ share in both Survey Nos.18/1 and 19. Instead, the Commissioner in his report has allotted major



portion in survey No.19 to the other share holders and left the land following in survey No.18/1 to the revision petitioner, which is not an equitable distribution and not in consonance with the total entitlement.

3. However, the learned counsel for the respondents would submit that such proposed division of the properties was not done on his own by the Commissioner, but based on the memo filed by the revision petitioner who suggested to allot G-marked portion in the Commissioner plan since, he has RCC building Worth Rs.15 lakhs in the said portion along with the enjoyment of 20 coconut trees and also he has stated that his personal property is located adjacent to the north of the G marked Portion.

4. The learned Counsel for the revision petitioners submits that this memo was not filed by the concerned parties and the same has been denied immediately by the revision petitioners. In any event, it is only a report filed by the commissioner taking into consideration various inputs and the lay out of property to be divided. It is always open to the parties to give suggestion to the Court to arrive at a fair and equitable division in consonance with the preliminary decree. The report of the Commissioner is not the end of the matter. Revision petition is filed against the dismissal of the amendment petition. The final report of the commissioner cannot to be canvassed at this stage and this court is not inclined to say anything about the Commissioner report and his sketch. It is open to the parties to submit their point of view regarding the revision of property based on their entitlement and it is for the Execution Court, to pass final decree taking note of the suggestions and objections of both parties.

5. With this above observation, this Civil Revision Petition is dismissed.

Sd/-

Assistant Registrar(Crl side)

/ True Copy /

Sub Assistant Registrar(C.S.)

To,
The Subordinate Judge, Palani.

COPY TO:

The Record Keeper, V.R. Section,
Madurai Bench Of Madras High Court, Madurai.

+1cc to M/S.G.PRABHU RAJADURAI, Advocate SR.No.62617

+1cc to M/S.R.VIJAYA KUMAR, Advocate SR.No.62480

+1cc to M/S.G.GOMATHI SANKAR, Advocate SR.No.62340

ta/das

MAS/KK/SAR2:09-08.2017:2P-6C

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