



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.04.2017
CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

C.R.P(PD) (MD)No.2541 of 2016

and

C.M.P(MD)Nos.11956 of 2016 and 1039 of 2017

1.A.Chinnamuthu
2.A.Balakrishnan
3.P.Vallinayagam

...Petitioners/ Petitioners1 to 3/
Respondents 1 to 3/Respondents 1 to 3

vs.

Punnaivanakattiya Pillai (Died)

1.UgandhaPerumal Pillai
2.Krishnasamy
3.Perumal
4.Chelladurai
5.Malathi
6.K.Rubi
7.K.Silviya
8.K.Raja vettrivel
9.N.T.Siva Subramaniyan
Veeramani Iyyer (died)
10. Manthira Murthi
11.K.Bala Subramaniyan
12.Serandhaiyaa Pillai
Muthu Pillai (died)
13.Rajam Veeramani
14.Gayathiri
15.Eswar
16.Mukkandi Serandhaiyaa Pillai
17.Mutthammal
18.Maharajan
19.Sivaperumal
20.Petchi Muthu
21.Meenakshi

... Respondents / Respondents/
Respondents 4 to 18/Defendants 4 to 18

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, to reverse and set aside the fair order and decreetal order of the Additional District Munsif Court, Tuticorin dated 03.11.2016 in I.A.No.315/2016 in I.A.No.247/2007 in O.S.No.311/1996.

**ORDER**

In the suit for partition, revision petitioners/defendants 1 to 3 filed counter claim, but, unfortunately failed to pay the required Court fee, as a result, the Trial Court while considering the case of the plaintiffs as *dominant litus*, passed decree in their favour, holding that the plaintiffs are entitled for 1 acre and 11½ cents in the total extent of 3 acres and 52 cents of land after acquisition of 35 cents of land for road development.

2. Being fortified by the preliminary decree, the plaintiffs have filed final decree application in I.A.No.247 of 2007. At that juncture, the revision petitioners have filed I.A.No.315 of 2016 to entertain their counter claim and pass appropriate order in respect of their counter claim in the partition suit.

3. The Trial Court taking note of the fact that after passing of the preliminary decree and pending final decree application, an application to re-visit the preliminary decree cannot be entertained in view of the Section 97 of the Civil Procedure Code and furthermore, the option open to the revision petitioners is to prefer an appeal against the preliminary decree. The other reason stated by the Trial Court for rejecting the plea of the revision petitioners is that under Section 11 of the Civil Procedure Code, once the matter is heard and decided, it cannot be re-agitated by way of an interlocutory application.

4. The learned counsel for the revision petitioners submitted that having made a counter claim in the partition suit while filing the written statement, just for the failure to pay the Court fee, the revision petitioners cannot be deprived of the rightful share in the suit property and if the final decree is allowed to be passed, the right of the revision petitioners to get their shares in the suit property will be totally denied and deprived. Hence, the request to modify the preliminary decree or to pass the supplementary decree in the light of the counter claim ought not to have been entertained by the Trial Court.

5. *Per contra*, the learned counsel for the respondents submitted that in the suit filed in the year 1993, a preliminary decree was passed as early as 1997. But, till date, due to the intervention of the revision petitioners, the decree holders are not able to enjoy the fruits of the decree.

6. Considering the rival submissions of the parties, this Court is of the considered view that for non payment of Court fee, the rightful claim of the revision petitioners, if any, cannot be deprived at the threshold. The procedure being the handmaid of justice, an opportunity for the revision petitioners to agitate their claims and get their rightful shares in the suit property has to be given. At the same time, the respondents should not be



deprived any further from getting the fruits of the decree.

7. Our High Court, in **1981 MLJ S.V.Muthu and others Vs. Veerammal and another** has held as follows:-

"If the preliminary decree already passed does not contain any declaration as to the rights of the defendants, their application for partition or separation of their share shall not be maintainable till they have the preliminary decree suitably modified, but when once the preliminary decree contains a declaration as to the defendants, share, they can, even after the passing of the preliminary decree, take steps for the actual separation of their share."

8. Here is a case where the declaration as to the right of the defendants is not ascertained by the Trial Court for want of Court fee and not on merits. Therefore, they are entitled to ascertain their rights in the suit property on payment of Court fee.

9. At this juncture, the learned counsel for the petitioners submits that the defendants 1 to 3 who are the revision petitioners have taken out a fresh application under Order 20 Rule 18 in I.A.No.61 of 2017 for modification of the preliminary decree.

10. In the light of the above submission, to meet the ends of justice, this Civil Revision Petition is disposed of on the following directions:-

(i) The Trial Court shall dispose of I.A.No.61 of 2017 and permit the revision petitioners to pay the required Court fee and thereafter consider their case on merits and pass appropriate orders.

(ii) In any event, the Trial Court shall dispose of that application on or before 30.07.2017 and thereafter proceed with the final decree application.

No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif, Tuticorin.

Copy To:

The Section Officer, V.R Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.V.Raghavachari, Advocate, SR No. 54272

+1 CC to Mr.MuthuVijayan, Advocate, SR No. 53694

NBI/SM

PSM/SV/08.05.2017/3P/5C