

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP(NPD).No. 2231 of 2017 and
C.M.P.Nos. 10606 of 2017 and 4482 of 2018

Smt.Suseela Ammal(Died)

1. Mrs.G.Prema
2. Mrs.S.Kasturi
3. Mrs.D.Sathya
4. Mrs.C.B.Jayanthi
5. B.Ramesh
6. Ms.B.Sandhiya

... Petitioners/LR of the
Deceased

Vs.

Smt.Saroja(Died)

1. A.Vijayabharathi
2. S.Ravindran
- Sulochanammal (Died)
3. Smt.Giriya
4. Smt.S.Geetha
5. J.Manohar Reddy
6. Janathana Reddy
7. J.V.Suryanarayana Reddy

... Respondents 1 & 2/LR's
deceased plaintiff

... Respondents 3 to 7/
LR's of Deceased D2

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to struck off the petition in I.A.No.199 of 2014 in O.S.No.454 of 2004 on the file of the I Additional District Judge, Chengalpattu.

For Petitioners : M/s.P.Bagyalakshmi

For Respondent 1 &2 : Mr.T.P. Manoharan,
Senior Counsel
For Mr.J.M.Naveen

For Respondent 3 to 6 : Notice Served, No Appearance

For Respondent-7 : Mr.Suryanarayana Reddy
Party in person NA

O R D E R

The respondent/plaintiff has filed a suit against the petitioners in O.S.No.454 of 2004 for partition. After hearing

the arguments, the Trial Court passed a preliminary decree dated 28.06.2007, against which the petitioners/defendants preferred an appeal before this Court in A.S.No.630 of 2008 dated 28.02.2017 and the same was partly allowed. During the pendency of the appeal, the 3rd respondent herein filed an Interlocutory Application in I.A.No.199 of 2015 before the trial court for passing of final decree based on the preliminary decree dated 28.06.2007. The Interlocutory Application filed for passing of final decree was stayed by this Court. During the pendency of the final decree application, the petitioner/plaintiff (Saroja-died) filed an Interlocutory Application in I.A.No.199 of 2013 to appoint an Advocate Commissioner and the Advocate Commissioner was also appointed to inspect the suit properties. Subsequently, the judgment and decree passed by the Trial Court in O.S.No.454 of 2004, dated 28.06.2007 was modified by this Court in the Appeal in A.S.No.630 of 2008 by judgment dated 28.02.2017. Even without bringing these facts into the Trial Court, the petitioners/defendants proceeded with the final decree proceedings. Therefore, even they have not taken any steps to amend the modified preliminary decree. Therefore, the petitioners have filed the present revision to strike off the final decree application in I.A.No.199 of 2014 on the file of the First Additional District Court, Chengalpattu.

2. The learned counsel appearing for the petitioners would submit that once the preliminary decree was passed by the Trial Court, which was modified by this Court in A.S.No.630 of 2008, in the meanwhile, the petitioner/plaintiff filed an Interlocutory Application in I.A.No.199 of 2015 to appoint an Advocate Commissioner and for passing of final decree. The petitioners should have filed a fresh application to pass final decree based on the modified preliminary decree passed by the First Appellate Court, or otherwise, they should have amended the decree and even brought to the notice of the Trial Court regarding the modified decree. They have not taken any steps to amend the decree and they proceeded further. Therefore, the petitioners have filed the present revision.

3. The learned counsel for the respondents would submit that subsequent to that, now they have filed an application to amend the preliminary decree based on the modified decree passed by the First Appellate Court. Since this Court has stayed the proceedings for passing of final decree in the revision, the respondents filed an application to amend the preliminary decree as per the First Appellate Court's decree and it was even not taken on file.

4. Heard both sides and perused the records.

5. It is not in dispute that the respondent/plaintiff has filed the suit against the revision petitioners and initially the preliminary decree was passed by the Trial

Court. Being aggrieved by the same, the petitioners/respondents preferred an appeal in A.S.No.630 of 2008, dated 28.02.2017. During the pendency of the appeal, passing of the final decree alone was stayed. The deceased of the petitioner/plaintiff has filed an Interlocutory Application in I.A.No.199 of 2008 for passing of final decree. During the pendency of the final decree application, in the Appeal in A.S.No.630 of 2008, preliminary decree passed by the Trial Court was modified. Therefore, as stated by the learned counsel for the petitioners, both the petitioners as well as the respondents, though they are parties to the appeal and also in the final decree proceedings, they have not brought to the notice of the Trial Court. It is the duty of the petitioners to bring to the notice of the Trial Court about the modification of the decree. However, that was not done. Therefore, the present petitioners moved this revision without incorporating the modified decree and they proceeded with the final decree application.

6. Therefore, the learned counsel for the respondents would submit that the petitioners have taken steps and also filed an application to amend the preliminary decree as per the modified decree of the First Appellate Court. Now, because of stay granted by this court in this revision, the Trial Court could not proceed with that application. The respondents have also brought to the knowledge of the Trial Court regarding the modified preliminary decree passed in the Appeal in A.S.No.630 of 2008. Hence, there is no impediment to the Trial Court to proceed further. As per the modified decree passed in the Appeal in A.S.No.630 of 2008. The Trial Court is directed to take amendment application filed by the respondents on file, if it is otherwise in order and dispose of the same in accordance with law and to proceed with the application for passing final decree as per the modified decree passed by this Court in the Appeal in A.S.No.630 of 2008.

7. Since final decree application is pending from the year 2014, the trial Court is directed to proceed with the final decree application in accordance with law, and dispose of the same within a period of three months from the date of receipt of a copy of this order.

8. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Cs VIII)

//True Copy//

Sub Assistant Registrar

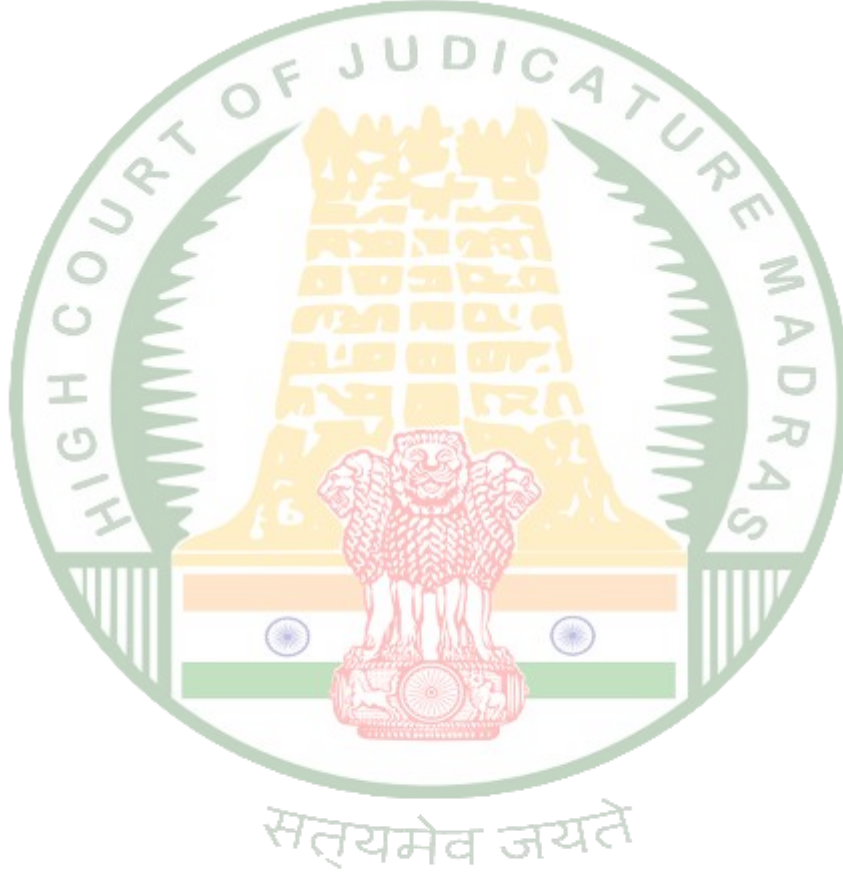
To

The first Additional District Judge,
Chengalpattu.

+1cc to Mr.K.P.Jotheeswaran, Advocate in sr.48835 (27/08/18)

CRP (NPD) .No.2231 of 2017

EV (CO)
sm:14.8.2018



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