



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P(MD)No.344 of 2018 (PD)

and

C.M.P(MD)No.1580 of 2018

Monikandan Asari ...Petitioner/1st Petitioner/1st Plaintiff

Vs.

1.Arputharaj

2.Josephin Raj

3.Stalin Jose ... Respondents 1 to 3/Respondents/Defendants

4.Rajan

5.Kannan ... Respondents 4 & 5/Petitioners 2 & 3/
Plaintiffs 2 & 3

(Respondents 4 & 5 given up and may be dispensed with notice)

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 09.08.2017 passed in I.A.No.211 of 2016 in O.S.No.85 of 2011 on the file of the Principal District Munsif Court, Kuzhithurai and to allow the same.

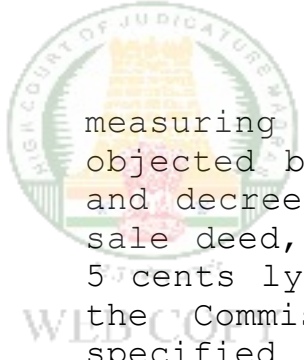
For Petitioner : Mr.S.Sivakumar

ORDER

This Civil Revision Petition has been filed challenging the order dated 09.08.2017 passed in I.A.No.211 of 2016 in O.S.No.85 of 2011 on the file of the Principal District Munsif Court, Kuzhithurai.

2. Heard the learned Counsel for the petitioner and perused the materials available on record.

3. The Petitioner states that he filed a suit in O.S.No.85 of 2011 for partition. It appears that the petitioner has purchased a land to an extent of 5 cents from one of the co-owners and the sale deed is Ex.A.1. The suit was decreed on 23.07.2015 and thereafter, the plaintiffs in the suit filed an application under Order 20 Rule 11 of Civil Procedure Code, to pass final decree and to appoint a Commissioner to allot 5 cents, as per the preliminary decree. It appears that during final decree proceedings, an Advocate Commissioner was appointed and he filed a report and plan. In the Commissioner's plan, plot 'A'



measuring 5 cents was allotted to the plaintiffs, which was objected by the respondents/defendants stating that the judgment and decree for partition was passed only on the basis of Ex.A.1-sale deed, wherein, the plaintiff has purchased only an extent of 5 cents lying east of the western most 10 cents. It appears that the Commissioner, instead of carving out the area that is specified in the sale deed, allotted 'eastern portion' instead of 'western portion'. In the said circumstances, the lower Court has directed the Commissioner to visit the property and divide the revision petitioner's 5 cents purchased by him as per the sale deed dated 23.12.1953. This order is challenged before this Court in the present Civil Revision Petition.

4. It is not in dispute that the petitioner has purchased 5 cents from one of the co-owners as per sale deed Ex.A.1 and hence, he is entitled to claim right in the property which he is legally entitled to. However, he cannot, for his convenience, seek allotment of different property, after a preliminary decree for partition of his specific 5 cents.

5. The trial court, after analysing the entire facts and circumstances of the case, has rightly passed an order. In the light of the above facts, I do not find any perversity or illegality in the order impugned in this revision.

6. In the result, the Civil Revision Petition is dismissed and the order dated 09.08.2017 passed in I.A.No.211 of 2016 in O.S.No.85 of 2011 on the file of the Principal District Munsif Court, Kuzhithurai is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Kuzhithurai.

+1cc to Mr.S.Sivakumar, Advocate Sr.No.50978

RM

VB/KK/SAR4/08/03/2018/2P/3C

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