



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 31.10.2018

Delivered On : 26.11.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1398 of 2015

and

M.P. (MD) No.1 of 2015

Fazuludeen ... Petitioner/1st Plaintiff / 1st Respondent

Vs.

1.Salma Bivi

2.Abdul Subhan

... Respondents 1 &2 / Defendants 5&6/
Petitioners

3.Noorjahan

4.Mumthaj Begam

5.Mallika Begam

... Respondents 3 to 5 / Plaintiffs 2 to4/
Respondents 2 to 4

6.Kamala

7.Rejiya Begam

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

Prayer : This revision petition is filed under Article 227 of Constitution of India, to set aside the order, dated 20.04.2015 passed in I.A.No.534 of 2014 in O.S.No.203 of 2004 by I Additional District & Sessions Court (PCR) Thanjavur thereby allowing the revision petition.

For Petitioner : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For R1, R3 & R5 : Mr. S.M.S.Johny Basha

R2 : Dismissed vide order dated 14.06.2015.

R4, R6, R7 : Formal parties vide order dated 05.08.2015

O R D E R

This petition is filed to set aside the order, dated 20.04.2015 passed in I.A.No.534 of 2014 in O.S.No.203 of 2004 by the learned I Additional District & Sessions Judge, (PCR), Thanjavur.

2.The revision petitioner is the first plaintiff in the suit. The first and second respondents are the defendants 5 and 6 in the suit. The third to fifth respondents are the plaintiff Nos.2 to 4 in the suit. The sixth and seventh respondents are the defendant Nos. 2 and 4 in the suit.



3. This petitioner and respondent Nos. 3 to 5 are the plaintiffs in the suit and they filed the suit against the defendants claiming a preliminary decree for partition and for separate possession of 5/7th share in the suit property.

4. The learned I Additional District Judge, Thanjavur, has passed a preliminary decree, on 16.07.2013, allotting share for the plaintiffs in Item Nos. 1 and 2 of the 'A' Schedule property and allotted some properties in C, D, E schedule properties and dismissed the suit regarding the entire 'B' schedule property and regarding item Nos. 3, 4 of 'A' schedule property, in the suit. The fifth and sixth defendants have filed I.A.No.534 of 2014, for a prayer of appointing an Advocate Commissioner to divide the properties and to allot the shares to the defendants. The trial Court passed an order for appointing an Advocate Commissioner to divide the suit properties and to allot properties to the defendants 5 and 6 and allowed the petition.

5. Against that order the petitioner has come forward with this revision petition.

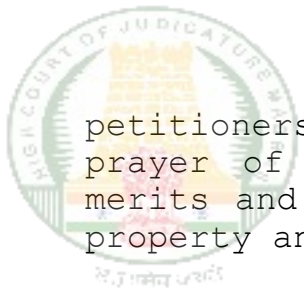
6. On the side of the petitioner, it is stated that as per the preliminary decree, item No. 1, to be allotted to the plaintiff and E schedule property to be allotted to the Legal Representatives of the defendants 4 to 6 and equity to be made out in the other properties.

7. On the side of the petitioner, it is stated that the defendants 4 to 6 filed an application, seeking an appointment of an Advocate Commissioner, to divide the entire suit properties including the rejected portion, for which, the trial Court has negatived the relief of partition. Without appreciating the contention in the preliminary decree, the trial Court has allowed the petition for appointment of a Commissioner.

8. On the side of the first respondent, it is stated that the first defendant died and the defendants 4 to 6 are the Legal Representatives of the first defendant, the decree is passed with regard to 'A' schedule item Nos. 1 and 2. But, the defendants 5 and 6 filed a final decree petition, seeking the allotment of share only as per the preliminary decree the first and second respondents have filed a final decree petition, only to allot 2/7th share as per the preliminary decree passed in O.S.No.203 of 2004.

9. Records Perused.

10. The preliminary decree was already passed by the competent Court and the impugned order is only for the appointment of an Advocate Commissioner to divide the property and to allot the share available to the petitioners/first and second respondents herein in the final decree proceedings. The trial Court has ordered for the appointment of a Court Commissioner to divide the property as per the preliminary decree and to allot a share that is due for the



petitioners/first and second respondents herein. The suit is for a prayer of partition and the trial Court has passed an order on merits and has decided that the Commissioner has to visit the suit property and to divide the same as per the preliminary decree.

11. In the above circumstances, the suit is for a prayer of partition, the Lower Court has ordered the Commissioner to divide the suit properties. The only contention of the respondent is that the entire suit properties are stated in the petition and hence, the revision petitioner has objected the impugned order. Though the defendants filed a final decree petition after mentioning all the suit properties, the trial Court has passed the correct order stating that the Commissioner has to divide the suit property as per the preliminary decree. Hence, the contention of the petitioner is not maintainable.

12. The Commissioner has to allot the property, as per the preliminary decree. Hence, mentioning of the entire property will not be a prejudice to the petitioner or the respondents. There is no other allegation put forth by the revision petitioner. In the above circumstances, this Court has come to the conclusion that there is nothing sufficient enough to interfere in the order of the trial Court and hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The I Additional District & Sessions Judge,
(PCR), Thanjavur.

2. The Section Officer, (2 Copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Anand Chandrasekar, Advocate Sr.No.96960
+1cc to Mr. S.M.S.Johny Basha , Advocate Sr.No.97030

LS

KM/BK/SAR3/20.12.2018/3P/6C