



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (NPD) (MD) .No.1117 of 2018 and
C.M.P. (MD) No.4807 of 2018

Thiyagarajan

... Revision Petitioner/4th Respondent/
4th Defendant

Vs.

1. Sethu Gopal
2. Venkatesan

... Respondents 1 & 2/Petitioners/
Some of the LR's of the
deceased plaintiff

3. S.Sankarapandian
4. S.Ramakrishnan
5. Paramanandam
6. Ananthi
7. Navaneethakrishnan
Dhanalakshmi (died)
8. Vasantha
9. Pangajam
10. Malarvizhi
11. Vidyalakshmi
12. Mukunthan
13. Revathi
14. Krishnamoorthi
15. Ramesh
16. Sabarirajan

... Respondents/Respondents 1 to 3 &
5 to 16/Defendants 1 to 3 & 5 to 16

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to reverse and set aside the order made in I.A.No.145 of 2014 in O.S.No.51 of 1994 on the file of the Sub Court, Theni.

For Petitioner	: Mr.M.S.Balasubramania Iyer
For R-1 & R-2	: Mr.S.Siva Thilakar
For R-3 to R-8,	
For R-10, R-12&R-13	: Tapal due.
For R-9, R-11, R-14 to R-16	: No appearance.

O R D E R

One M.Muthusankarammal filed O.S.No.51 of 1994 on the file of the Subordinate Court, Periyakulam, seeking the relief of partition and separate possession. The preliminary decree was passed on 16.09.2005, declaring her 1/35th share in the suit property except item 17. The said Muthusankarammal passed away, leaving behind three sons and one daughter. One of the sons has passed away leaving behind wife and two children. Unfortunately, the legal heirs of the said Muthusankarammal do not seem to remain as one block. Therefore, two of the sons alone filed I.A.No.145 of 2014 for passing final decree. The same was allowed by the impugned order dated 17.03.2017. The correctness of the said order is questioned in this Civil Revision petition.

2. The learned counsel appearing for the Revision petitioner pointed out that a preliminary decree cannot be partitioned as such. The legal heirs of the plaintiff who obtained a preliminary decree in her favour ought to have applied for passing of final decree as a whole. But in this case only two of the legal representatives have come forward and filed the final decree petition in I.A.No.145 of 2014. The same is clearly impermissible in law.

3. In that view of the matter, the order passed by the learned Subordinate Judge, Theni, in I.A.No.145 of 2014 in O.S.No.51 of 1994, dated 17.03.2017, is set aside. The Civil Revision petition stands allowed.

4. But then, the parties cannot be driven to file another suit. It is well settled that there can be passing of more than one preliminary decree or one final decree in a partition decree. Therefore, respondents 1 and 2 are given liberty to file a fresh application for passing a supplementary preliminary decree by calling upon the Court below to take note of the developments that have taken place after passing of final decree. The learned counsel appearing for respondents 1 and 2 submits that such an application will be filed within a period of three weeks from the date of receipt of a copy of this order. If such an application is filed within the aforesaid period, the Court below shall conclude the entire proceedings within a period of six months, thereafter.

No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

Sub Assistant Registrar(CS-I)



To

1. The Subordinate Judge,
Theni.

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2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1. C.C. to M/S.M.S.Balasubramania Iyer, Advocate SR.No. 83512

+1. C.C. to M/S.S.Siva Thilakar, Advocate SR.No. 83591

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