



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2018

Delivered on : 21.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.2579 of 2017

and

C.M.P. (MD) No.11943 of 2017

1.S.Ayshakani
2.S.Jalaludeen
3.S.Mohammed
4.S.Anija Begam

.. Petitioners

vs.

1.S.Shahul Hameed (died)
2.S.M.Ayooob
3.Muthumeeragani (died)
4.Ayisha Ummal (died)
5.Jabarun Jamil
6.Ahamed Ibarahim
7.Sheik Madhar (died)
8.A.Ahamed Naheeb
9.M.Ahamed Basheer
10.M.Fatheema Beevi
11.Shaheera Banu
(R4 to R11 given up,
notice not necessary)

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the final (Docket) Order dated 12.12.2017 passed in E.P.No.14 of 2017 on the file of the District Munsif, Virudhunagar in O.S.No.103 of 1984 on the file of the Sub-Court, Virudhunagar.

For Petitioners

: Mr.P.Santhosh Kumar

For Respondent

: Mr.P.Velmurugan (for R2)

R1 & R3 - Died

R4 to R11 - Given up

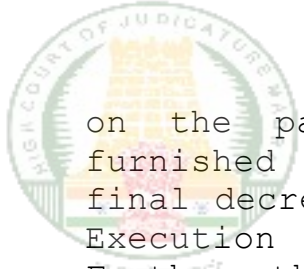
**ORDER**

This civil revision petition is filed as against the order of delivery made in E.P.No.14 of 2017 in O.S.No.103 of 1984 on the file of the learned District Munsif Court, Virudhunagar by the revision petitioners who are the legal representatives of 4th defendant.

2. It is case of the revision petitioners that one Shahul Hameed filed a Suit against the respondents 4 to 7 herein in O.S.No.103 of 1984 on the file of the learned Sub-Court, Srivilliputhur for partition and separate possession and also rendering accounts. The said suit came to be decreed on 15.07.1987 and thereby preliminary decree for partition was passed. Thereafter, as against the preliminary decree on appeal in A.S.No.210 of 1988 was filed before the High Court of Judicature at Madras by the plaintiff and the same was dismissed on 08.11.2000. Subsequently final decree application was filed in which the Revision Petitioners were impleaded as legal representatives of the deceased 4th defendant namely Sheikh Madhar. The Revision petitioners have also filed an objection to the Advocate commissioner report stating that the Commissioner has not equally allotted the shares and the plan filed along with the report is also not correct.

3. It is further contended by the Revision petitioners that as against the final decree dated 17.10.2016, they decided to file appeal and therefore they filed copy application. In the meanwhile the 2nd respondent herein filed execution petition in E.P.No.14 of 2017 and in which the revision petitioners filed a detailed counter stating that they are taking steps to file appeal against the final decree. However, the Lower Court ordered delivery in the above execution petition on 12.12.2017 which is being challenged in this Civil Revision Petition.

4. Per contra, the Learned Counsel for the 2nd respondent contented that in the above Partition Suit preliminary decree was passed as early as on 15.07.1987 and the fruits of the decree cannot be enjoyed so far. Followed by the preliminary decree, final decree was also passed on 17.10.2016. Further the first appeal filed as against preliminary decree was also dismissed on 08.11.2000. In the execution petition filed by the 2nd respondent herein and 2 others, the Revision Petitioners entered appearance through their counsel and they have given sufficient opportunity and in fact they also filed counter to the execution petition. At this stage, without filing any appeal as against the final decree dated 17.10.2016 for the past two years, now it is highly improper

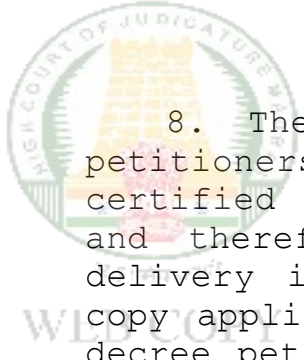


on the part of the Revision petitioners that they are not furnished with certificate copy of order and decree made in the final decree application and therefore the delivery ordered in the Execution Petition is liable to be set aside, cannot be accepted. Further the revision petitioners have not filed the fair and decretal order in this civil revision petition so as to enable this Court to know about the entire order of delivery passed by the Execution Court. Hence, the Learned Counsel for 2nd respondent prays this Court to dismiss the civil revision petition.

5. I heard Mr.P.Santhosh Kumar, learned counsel for the petitioners and Mr.P.Velmurugan, learned counsel for the 2nd respondent and the entire materials available on records are perused.

6. It is seen from the records that preliminary decree for partition was passed on 15.07.1987. As against the same, appeal suit filed by the plaintiff in A.S.No.210 of 1988 came to be dismissed on 08.11.2000. Thereafter, it seems that final decree was passed on 17.10.2016, the petitioners herein were brought on record as legal heirs of the 4th defendant Sheik Madhar in the final decree application. Though final decree was passed on 17.10.2016, the petitioners herein have not chosen to file appeal so far. The contention of the petitioners herein that the 1st petitioner herein being a widow, aged about 57 years old is unable to get the certified copy of final decree, cannot be accepted. The petitioners 2 and 3 herein are her sons and the 4th petitioner is her daughter and if at all they intended to file appeal, they could have very well obtained certified copy of final decree through their counsel immediately after the final decree was passed. The contention of the petitioners herein that they filed copy application only on 05.09.2017 after receiving notice in the execution petition would show their malafide intention to delay the disposal of the Execution Petition and the same cannot be allowed to stand by this Court.

7. Further, as rightly pointed out by the Learned Counsel appearing for the 2nd respondent, the revision petitioners have not filed the fair order of delivery made in the above execution petition so as facilitate this Court to come to the conclusion that the Lower Court has considered the case of revision petitioners or not. The respondents herein are not in a position to enjoy the fruits of the preliminary decree which was passed 30 years back. This Court does not find any reason to interfere with the order of delivery made in the above Execution petition.



8. There is no merit in the contention of the revision petitioners that since they filed copy application to get the certified copy of order and decree made in the execution petition and therefore the Execution Court ought not to have ordered delivery is not justified. Merely because the petitioners filed copy application to get the order and decree passed in the final decree petition according to their whims and fancies, it does not mean that the Court should wait till they filed appeal against the final decree and get order. The said contention of the Learned Counsel for revision petitioners cannot be countenanced.

9. Viewing from any angle, absolutely there is no merit in the contention urged on the side of the revision petitioners in this civil revision petition. Hence, the civil revision petition is liable to be dismissed, accordingly it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The District Munsif,
Virudhunagar.
2. The Subordinate Court,
Virudhunagar.

+ 1 CC TO MR.P.VELMURUGAN, ADVOCATE IN SR NO. 79412

VSV

BU/MK/RSK/SAR-2 : 18.09.2018 : 4P/4C

order made in
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and
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21.08.2018