



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) Nos.1319 and 1458 of 2016 and
C.M.P. (MD) .No.6323 of 2016 in
C.R.P. (MD) No.1319 of 2016

In C.R.P. (MD) No.1319 of 2016:

1.N.Nagammal
2.N.Thavamani .. Petitioners / Petitioners 1 & 3/
Defendants 1 & 3

vs.

1.N.Rajamani .. 1st Respondent/ Respondent/Plaintiff
2.Kamatchi .. 2nd Respondent/2nd Respondent/
2nd Defendant

PRAYER: Civil Revision Petition filed under Section 115 of the Constitution of India, against the fair and decreetal order dated 09.03.2016 passed in I.A.No.426 of 2014 in O.S.No.143 of 2011 on the file of the III-Additional Subordinate Judge, Madurai.

For Petitioners : Ms.Jessi Jeeva Priya
for M/s.G.Aravinthan
For Respondents : M/s.T.R.Jeyapalam
for J.Barathan

In C.R.P. (MD) No.1458 of 2016:

1.N.Nagammal
2.N.Thavamani .. Petitioners / Defendants 1 & 3

vs.

1.N.Rajamani .. 1st Respondent / Plaintiff
2.Kamatchi .. 2nd Respondent / 2nd Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.01.2012 passed in O.S.No.143 of 2011 on the file of the III-Additional Subordinate Judge, Madurai.



For Petitioners : Ms.Jessi Jeeva Priya
for M/s.G.Aravinthan
For 1st Respondent : M/s.T.R.Jeyapalam
for J.Barathan

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COMMON ORDER

The defendants 1 & 3 in O.S.No.143 of 2011 on the file of the III-Additional Sub Judge, Madurai are the revision petitioners herein. The said suit is one for partition. Preliminary decree was passed on 30.01.2012 on exparte basis. Questioning the same, the revision petitioners herein filed an application under Order 9 Rule 13 of Code of Civil Procedure. There was a delay of 794 days in filing the said application. To condone the same I.A.No.493 of 2014 was filed. The Court below by order dated 09.03.2016 dismissed the said IA. Challenging the same, C.R.P.(MD)No.1319 of 2016 has been filed. Parallely C.R.P.(MD).No.1458 of 2016 has been filed, questioning the very preliminary judgment and decree made on 30.01.2012. Since both the petitions are connected, they are taken up together and disposed of by way of common order.

2.Heard the learned counsel on either side.

3. The learned counsel appearing for the contesting respondent/plaintiff pointed out that the Court below has given a finding with regard to the service of notice and that is clearly against the revision petitioners herein. Though there is considerable force in the submission made by the learned counsel for the plaintiff, the fact remains that the revision petitioners were not served as per law. But, this Court is of the view that the preliminary judgment and decree questioned in C.R.P.(MD).No.1458 of 2016 cannot be set aside fully. This is so even according to the revision petitioners herein. The contest is only with regard to item No.2 of the suit schedule. As regards item No.1 of the suit schedule it is conceded that it is an ancestral suit property, that is, each of the parties herein are having 1/4th share therein. Therefore, the preliminary decree dated 30.01.2012 need not be set aside in toto. As already pointed out by the learned counsel for the plaintiff final decree has been passed on 07.10.2017 and that execution proceedings have also been instituted. Therefore, this Court modifies the preliminary decree as well as the final decree. The same are set aside in so far as the second item of the suit schedule alone is concerned. As far as the first item is concerned, the plaintiff will have to amend his execution petition accordingly.

4. The learned trial Judge had passed the judgment in the following manner:



"Suit for partition of the suit property into four equal shares and allot one share to the plaintiff and to give separate possession of $\frac{1}{4}$ share of the plaintiff and for cost.

To-day when the suit is taken up, P.W.1 Proof Affidavit filed Ex.A1 to A8 filed, Claim proved. Preliminary decree for partition decreed as prayed for."

5. It has been laid down on several occasions that the trial Court should not pass such non-speaking judgment. The impugned judgment does not satisfy any of the requirements under Order 20 Rule 5 of CPC. Therefore, even though it is appealable, this Court has to necessarily exercise the supervisory jurisdiction available under Article 227 of the Constitution of India. The learned counsel for the revision petitioners placed reliance on the decision reported in **2015 (4) CTC 673**. The said decision is clearly applicable to the facts and circumstances of the case. Hence, the order impugned in C.R.P.(MD).No.1319 of 2016 is set aside. The Court below is directed to number the application filed under Order 9 Rule 13 of CPC and allow the same. The revision petitioners are entitled to contest the suit on merits in so far as the item No.2 is concerned. The suit is of the year 2011. Therefore, the Court below shall dispose of the same in accordance with law and on merits, within a period of three months from the date of receipt of a copy of this order. Both the Civil Revision Petitions are partly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The III-Additional Subordinate Judge,
Madurai.

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

+ 1 CC TO M/s.P.JESSI JEEVA PRIYA, ADVOCATE IN SR No. 82377

+ 1 CC TO Mr.T.R.JEYAPALAM, ADVOCATE IN SR No. 82557

PJL

TE/PM/SAR-3 : 25/10/2018 : 3P/6C

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