



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (NPD) (MD).No.159 of 2016

WEB COPY

Adaikalamary ... Petitioner/Petitioner/Plaintiff

Vs.

Elusammal (died) ... Nil/Nil/1st Defendant

1.Anethesi

2.Philominal ... Respondents 1 and 2/Respondents 2 and 3/
Defendants 2 and 3

Anthony samy (Died) ... Nil/Nil/4th Defendant

3.Iruthayamary

4.Mary Kamalee

5.Leena

6.Minor David Raja

(R6 is represented by his mother
and natural guardian of the
third respondent) ... Respondents/Respondents/Nil

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.02.2015 made in I.A.No.1289 of 2014 in O.S.No.17 of 1995 on the file of the Court of Additional District Munsif Court, Lalgudi and allow the present Civil Revision Petition.

For petitioner : Mr.J.Maria Roseline

For R2 to R6 : Mr.Arul Vadivel Sekar

ORDER

O.S.No.121 of 1982 was instituted by the revision petitioner before the District Munsif Court, Thuraiyur, seeking the relief of partition. Preliminary decree was passed on 20.10.1989. Her mother Elusammal was shown as a first defendant. She passed away on 22.12.1990. As per the terms of the preliminary decree, the first defendant Elusammal was also given a certain share in the suit property. The revision petitioner later filed an application and final decree was passed allotting her share in the suit property. Thereafter, the revision petitioner filed I.A.No.1289 of 2014 claiming her 1/4th share out of the 1/5th share of Elusammal's share in the suit property. The Court below by order dated 13.02.2015, dismissed the said I.A. Questioning the same, this Civil Revision Petition has been filed.

<https://hcservices.ecourt.gov.in/hcservices/> 2. Heard learned counsel on either side.

3.As rightly contended by the learned counsel for the



contesting respondents, the revision petitioner cannot go beyond the terms of the preliminary decree. It is true that Elusammal passed away only after the preliminary decree was passed. But then, the petitioner will have to apply for passing a supplementary preliminary decree.

4.It is well settled that any number of preliminary decree can be passed and there is no limitation for filing a final decree application.

5.In this circumstances, giving liberty to the revision petitioner herein to apply for passing a supplementary preliminary decree or modification of the share, the order impugned in this Civil Revision Petition is sustained and this Civil Revision Petition is dismissed. No costs.

Sd/

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-I)

To:

The Additional District Munsif,
Thuraiyur

+1cc to Mr.J.MARIA ROSELINE, Advocate, SR.No.88851

+1cc to Mr.C.ARUL VADIVEL @ SEKAR, Advocate, SR.No.88764

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