



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.08.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) .No.1558 of 2018 and
C.M.P. (MD) No.6834 of 2018

1. Sellammal
2. Parthasarathy ... Petitioners/Petitioners/
Plaintiffs

Vs.

1. Paramanandam
Sellappagounder(died)
2. Deivanayagam
3. Sellammal ... Respondents/Respondents/
Defendants

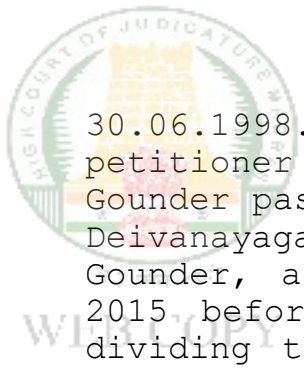
PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.03.2018 passed in I.A.No.775 of 2015 in O.S.No.619 of 1994 on the file of the District Munsif Court, Oddanchatram.

For Petitioners : Mr.M.P.Senthil

ORDER

The Revision petitioners, namely, Sellammal and Parthasarathy who are the mother and the son filed O.S.No.619 of 1994 before the Court of the District Munsif, Palani, seeking the relief of payment of maintenance amount, partition and other reliefs. Preliminary Decree was passed in the said suit on 30.06.1998. The Court below decreed that the first defendant Paramanandam, namely, the husband of Sellammal should pay her a sum of Rs.7,200/- p.a., as maintenance amount. Charge was created on 1/4th share belonging to the first defendant. It was further decreed that the second plaintiff Parthasarathy was entitled to 1/4th share in the suit property. If the defendants failed to divide the suit property by metes and bounds and hand over to the second plaintiff, the second plaintiff was entitled to move the Court for appointing an Advocate Commissioner for division of his share by metes and bounds and allotting the same to him.

2. It appears that no further proceedings were taken out pursuant to the Preliminary Decree that was passed as early as on



30.06.1998. In the meanwhile, the father-in-law of the first petitioner and grandfather of the second petitioner herein Sellappa Gounder passed away. He died leaving behind his son Paramanandam and Deivanayagam and Sellammal, namely, wife of the said Sellappa Gounder, as his surviving legal heirs. They filed I.A.No.775 of 2015 before the Court of the District Munsif, Oddanchatram, for dividing their 3/4th share in the suit property. They wanted an Advocate Commissioner to be appointed for this purpose. The Court below by order dated 05.03.2018 appointed an Advocate Commissioner to take the assistance of Surveyor and file a report with regard to the allotment of the individual shares to the contesting parties. This order is questioned in this Civil Revision petition.

3. The learned counsel appearing for the Revision petitioners contended that Deivanayagam and Chellammal are not even the parties to the suit proceedings. In the first instance, he contended that the Revision petitioners instituted the said suit to protect their rights and that therefore, the Court below could not have gone beyond the terms of the preliminary decree. His grievance is that even without payment of Court fee, the contesting respondents herein are getting their 3/4th share in the suit property.

4. I am unable to agree with the said submissions of the learned counsel appearing for the Revision petitioners.

5. It may be true that the learned counsel for the Revision petitioners is technically correct in his contentions. But, this Court is of the view that this Court will have to look at the substantive aspect of the matter. The contesting respondents only want their 3/4th share in the suit property. The rights of the Revision petitioners are in no way affected. The Revision petitioners admittedly had moved the Court below by filing O.S.No.619 of 1994 and obtained the preliminary decree in respect of 1/4th share. In fact such decree is not going to be affected now. Regarding the payment of Court fee, this matter is between the Court below and the applicants in I.A.No.775 of 2015. The Revision petitioners have not suffered any legal injury what so ever. Only a person who is aggrieved by the order passed by the Court below can move this Court and file a Civil Revision petition. These parties cannot be termed as "persons aggrieved". There is no merit in the Civil Revision petition.

6. The Civil Revision petition stands dismissed, accordingly. It is made clear that the charge created on 1/4th share of Paramanandham will continue. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

The District Munsif,
Oddanchatram.

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+1CC to Mr.M.P.Senthil, Advocate, SR.No.81030

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