

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(NPD).No.1278 of 2019

Penista Jeyakumar

..Petitioner/Plaintiff

Vs

T.James Terrance

..Respondent/Defendant

This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order in I.A.No.124 of 2017 in O.S.No. 112 of 2015, on the file of the learned Additional District Judge, Kanchipuram, Chengalpet, dated 05.10.2018.

For Petitioner : Mr.Suryanarayanan

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Additional District Judge at Kancheepuram District at Chengalpattu, dismissing the review petition filed by the plaintiff/petitioner.

2

With a view for brevity and clarity, the facts are described in a nutshell herein below:

The revision petitioner/plaintiff has filed the suit in O.S.No. 112 of 2015, on the file of the learned Principal Sessions and District Judge, Chengalpattu for a partition and separate possession of her

undivided share in the suit schedule property. The schedule of property has been decreed as follows in the plaint:

"All the part and parcel of land and building situated in Plot.No. 48. Poonamallee High Road, Grama natham land comprised in S.No.40/1 of Nandambakkam Village, Alandur Taluk, Kancheepuram District, vide Patta Resolution No.13442/05 measuring to an extent of 1744 sq.ft is being bounded on the North by; Shanmugam house, South by; Mount - Poonamallee high road, East by; precision Company Compounded, and west by; Govindaraj Shop."

3 The respondent herein had filed a written statement in August 2015, in which in paragraph 11 of the written statement, the defendant would submit as follows:

*"The Defendant further submits that the Defendant will not have any objection to the extent of division of the land and the building **equally** between the Plaintiff and the Defendant as they are joint owners of the land and the building in common."*

4 Based on this submission by the respondent, which practically amounted to a consent, the learned Additional District Munsif, Kancheepuram by his Judgment and decree dated 12.09.2015, was pleased to pass the preliminary decree and observed as follows:

"Perused the entire records. In this case though issues have been framed and though posted for trial this Court is of opinion that no need to conduct trial because sole defendant filed Written Statement consenting the suit claim and paid Court fee. Hence this Court is inclined to pass Judgment U/o 12 Rule 6 based on admissions available in Written Statement. Judgment pronounced. In the result Preliminary decree is passed thereby suit property is ordered to be divided into 2 equal shares and each one share is allotted to Plaintiff and defendant and both parties are at liberty to initiate separate final decree proceedings. No Costs."

5 It appears that thereafter, the plaintiff has come forward with the petition to review the order. In the affidavit filed in support of the review petition, the plaintiff would contend that the building was put up by her particularly, the first and second floors and therefore the partition of both the land and building was not correct. Thus, application was objected by the respondent/defendant and ultimately by an order dated 05.10.2017, the Additional District Judge was pleased to dismiss I.A.No. 124 of 2017 and challenging the same revision petitioner is before this Court.

6 Heard Mr.Suryanarayanan, learned counsel appearing on behalf of the revision petitioner/ plaintiff.

7 From a reading of the affidavit filed in support of the review petition, this Court is unable to find out as to what was the error that has crept in the face of the record, which required to be reviewed by the Court. Admittedly, the suit has been filed for a partition by the plaintiff for her share in schedule property which consisted both the building and land. Defendant has consented to the decree being passed by allotting half share to the plaintiff and the Court by applying the principles of Order 12 Rule 6 of the Code of Civil Procedure has also granted this relief. Considering the above, there is no error much less error apparent on the record. This Court does not find any infirmity in the order passed by the learned Judge.

8 The Counsel for the revision petitioner/plaintiff would contend that he may be given liberty to file an appeal. It is well open to the revision petitioner to file an appeal and the Court shall consider the appeal and the application in the manner known to law.

9 In the result, the Civil Revision Petition stands dismissed and order passed in I.A.No.124 of 2017 in O.S.No.112 of 2015, on the file of the learned Additional District Judge, Kanchipuram, Chengalpet, dated 05.10.2018 is confirmed. No costs.

04.04.2019

dua

P.T.ASHA, J.

dua

Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

To
The Additional District Judge,
Kanchipuram,
Chengalpet.



CRP.(NPD).No.1278 of 2019

WEB COPY

04.04.2019