IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.R.P(NPD)No.4526 of 2012

1.Saranya
2.Lakshmi

(First petitioner is declared as Major and her mother and guardian Lakshmi (P2) is discharged from guardianship vide Court order dated 11.04.2019 & 12.04.2019 made in C.M.P.Nos.9230 & 9231 of 2019 in C.R.P(NPD)No.4526 of 2012 respectively.)

...Petitioners

Versus

1.Pappayee
2.A.K.Elango
3.Pappathi
4.Mani
5.Thulasimani
6.Annakodi

...Respondents

This Civil Revision Petition is filed under Section 115 of C.P.C praying to set aside the order passed in I.A.No.214 of 2010 in O.S.No.301 of 2002 on the file of the Principal District Munsif, Erode dated 10.08.2012.

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For Petitioners : Mr.V.S.Kesavan

For Respondents - 1, 3 to 6 : Given up

For Respondent - 2 : Mr.S.Kaithamalai Kumaran

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O R D E R

The above Civil Revision Petition arises against the order passed by the learned Principal District Munsif, Erode in I.A.No.214 of 2010 in O.S.No.301 of 2002 dated 10.08.2012, in and by which, the learned Principal District Munsif had dismissed the Interlocutory Application filed by the petitioners herein.

2.1. The brief facts of the case are as follows:

The petitioners herein are the plaintiffs in O.S.No.301 of 2001. The petitioners had filed the suit for partition of the suit properties, wherein, the learned Principal District Munsif, Erode passed a preliminary decree on 29.12.2006 directing the division of suit properties into 36 equal shares and allotted 8/36 shares to the first plaintiff and 2/36 shares to the second plaintiff and also directed to initiate separate proceedings in ascertaining the *mesne profits*. Challenging the said decree and judgment passed by the trial Court, the plaintiffs/petitioners have filed an Appeal in A.S.No.55 of 2007 before the Principal Subordinate Judge's Court, Erode/First Appellate Court.

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2.2. The First Appellate Court by its judgment dated 06.04.2009, partly allowed the said Appeal and allotted 5/12 shares to the plaintiffs/petitioners and also entirely set aside the preliminary decree passed by the trial Court. The First Appellate Court in paragraph No.21 of its judgment had observed that as per the terms of the preliminary decree, *mesne profits* of the suit property has to be ascertained in separate proceedings. It appears that the decree has not included for *mesne* profits. Therefore, the petitioners have filed an Interlocutory Application in I.A.No.214 of 2010 before the Principal District Munsif Court, Erode seeking for appointment of an Advocate Commissioner to ascertain the *mesne profits* of the suit property as per the terms of the preliminary decree dated 29.12.2006 passed by the trial Court. While dismissing the said I.A.No.214 of 2010, though the learned Principal District Munsif had taken note of the fact that the Appellate Court had entirely set aside the preliminary decree passed by the trial Court, wrongly came to the conclusion that I.A.No.214 of 2010 filed by the petitioners is not maintainable. As against the dismissal of I.A.No.214 of 2010, the petitioners have filed the present revision petition.

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3. Heard the learned counsel for petitioners and learned counsel for second respondent.

4.1. On perusal of the orders passed by the Courts below and the judgment passed in A.S.No.55 of 2007, it is seen that the preliminary decree was passed by the trial Court and in an Appeal filed by the plaintiffs/petitioners, the First Appellate Court had entirely set aside the said preliminary decree passed by the trial Court and partly allowed A.S.No.55 of 2007. Though the First Appellate Court in paragraph No.21 of its judgment had clearly relegates parties to ascertain the *mesne profits* by way of initiating separate proceedings, that portion is not reflected in the decree.

4.2. While passing the preliminary decree, the trial Court had determined the rights of the plaintiffs whereas the Appellate Court has set aside the entire decree and judgment of the trial Court. That being the position, without seeking for the amendment of decree passed by the First Appellate Court, based on the same, the revision petitioner filed I.A.No.214 of 2010 for appointing an Advocate Commissioner to ascertain the *mesne profits.* All these aspects were taken into

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consideration and the learned Principal District Munsif rightly dismissed the said Interlocutory Application. Therefore, I do not find any error or infirmity in the order passed by the Principal District Munsif, Erode.

5. In the result, this Civil Revision Petition is dismissed and the order passed by the learned Principal District Munsif, Erode in I.A.No.214 of 2010 in O.S.No.301 of 2002 dated 10.08.2012 is confirmed. However, liberty is granted to the petitioners to file an appropriate Application before the Appellate Court to amend the decree and thereafter, proceed as per law.

12.04.2019

mrr

Index : Yes/No

To

The Principal District Munsif,
Erode.

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N.SATHISH KUMAR, J.,

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