

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1114 of 2014

1. S.Kalimuthu
2. S.Mathiammal ... Petitioners

v.

1. N.Kaliammal
(Petition dismissed as against R1 vide order dated 31.07.2018)
2. J.K.Balaraman
3. J.K.Subramani
4. J.K.Bheeman
5. Sundariammal
6. Kundiammal
7. B.Bhojan
8. B.Sivalingam
9. B.Krishnamoorthy
10. B. Kannan
11. K.Arumugham
12. K.Mani
13. K.Manoharan ... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and final order dated 12.07.2012 made in I.A.No.72 of 2012 in I.A.No.147 of 2004 in O.S.No.119 of 1998 on the file of the Subordinate Judge of Nilgiris at Udhagamandalam.

For Petitioner : Mr.K.F. Manavalan

For Respondents : Mr. L.Mouli – for R2 to R13

ORDER

Challenging the fair and final order passed in I.A.No.72 of 2012 in I.A.No.147 of 2004 in O.S.No.119 of 1998 on the file of the Subordinate Court, Nilgiris at Udhagamandalam. the plaintiffs have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.119 of 1998 for partition and for other reliefs. After contest, the Trial Court, passed a preliminary decree dated 22.07.2003.

3. Pursuant to the preliminary decree passed by the Trial Court, the plaintiff filed a final decree application in I.A.No.147 of 2004 and in the final decree application, the Trial Court appointed an Advocate

Commissioner to divide the property in terms of the preliminary decree passed by the Trial Court. The Advocate Commissioner also inspected the property and filed his report. Subsequently, on the objection raised by the defendants, the report filed by the Advocate Commissioner was scraped. Thereafter, a new Advocate Commissioner was appointed to inspect and divide the suit properties. However, the 2nd Commissioner, who was appointed by the Trial Court, do not file his report before the Trial Court.

4. Due to non-execution of the Warrant of Commission without any progress for more than four years, the Trial Court closed the final decree application on 30.06.2011 for non-filing of the Commissioner's report. Thereafter, the plaintiffs filed another application in I.A.No.685 of 2010 to reopen the final decree application, which was closed by the Trial Court on 30.06.2011. The application in I.A.No.685 of 2010 was allowed on 11.02.2011 and the warrant of commission was also recalled and reissued to the 3rd Advocate Commissioner. Even the 3rd Advocate Commissioner did not file his report, therefore, the Trial Court, closed the final decree application. In these circumstances, the plaintiffs filed an application in I.A.No.72 of 2012 to reopen the final decree application.

5. Though the counsel for the defendants endorsed no objection for allowing the application in I.A.No.72 of 2012, the Trial Court dismissed the application finding that already three Advocate Commissioners were appointed and therefore, there is no necessity for reopening the final decree application.

6. When a preliminary decree was passed by the Trial Court, a final decree has to be passed in terms of the same and for this purpose an Advocate commissioner must be appointed for dividing the properties. In the interest of justice, the Trial Court, should have allowed the application filed by the plaintiffs to reopen the final decree application, more so, when the defendants had no objection for allowing the application.

7. The learned counsel appearing for the respondents submitted that the respondents have no objection for allowing the Civil Revision Petition.

8. In these circumstances, the fair and final order passed by

the Subordinate Court, Nilgiris at Udhagamandalam. in I.A.No.72 of 2012 in I.A.No.147 of 2004 in O.S.No.119 of 1998 are set aside and the application in I.A.No.72 of 2012 stands allowed. Since the final decree application is pending from the year 2004, I direct the Subordinate Judge, Nilgiris at Udhagamandalam to dispose of the final decree application in I.A.No.147 of 2004 within a period of four months, from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed.

No costs.

22.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

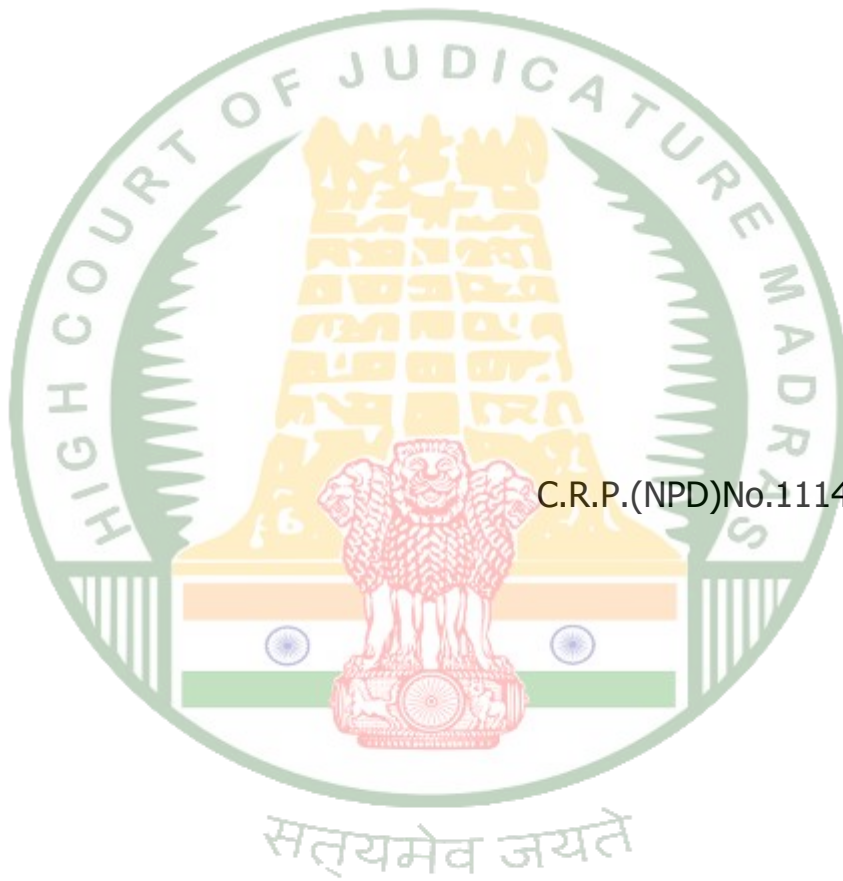
The Subordinate Court,
Nilgiris at Udhagamandalam.

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M.DURAIWAMY, J.

Rj



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