

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4780 of 2014

& M.P.No.1 of 2014

Krishnan (Deceased)

1. Ganesa
2. K.Murugesan
3. K.Manikam
4. Kamatchi @ Rani
5. Rajathi
6. Indrani

.... Petitioners

Vs

1. Nallusamy
2. Kasuvammal

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.613 of 2013 in O.S.No.690 of 1987 dated 24.06.2013, issuing notice to the legal heir of late Sadayan pending on the file of the Additional District Munsif Court, Namakkal.

For Petitioners : Mr.C.B.Murali Krishnan

For Respondents : Mr.T.Dhaya Kumar

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ORDER

Aggrieved over the order dated 24.06.2013, in I.A.No.613 of 2013 in O.S.No.690 of 1987, passed by the learned Additional District Munsif, Namakkal, the petitioners, who are the defendants in the above said suit have filed this Civil Revision Petition.

2. Originally the suit in O.S.No.690 of 1987 filed by one Lakshmanan and Velliayammal along with the respondents herein, for the relief of partition and separate possession as against one deceased Krishnan and the first petitioner. After receiving the written statement from the defendants, the learned Additional District Munsif, Namakkal, on 07.02.1992, has passed an order of exparte as against the petitioners by allowing the said suit and also passed preliminary decree after determining the right of the respondents.

3. Subsequent to that, based on the preliminary decree passed by the learned Additional District Musiff, Namakkal, the respondents, who are the third and fourth defendants in the said suit, have filed an application in I.A.No.613 of 2013 under Order 26 Rules 13 & 14 of C.P.C., before the same Court. In the said application, they prayed to pass a final decree by appointing an Advocate Commissioner,

as per the right determined in the preliminary decree. In the said application the present petitioners were shown as respondents 1 to 7. After numbering the said application, on 24.06.2013, the learned Additional District Munsif, Namakkal, has ordered to issue notice to the petitioners, who are arrayed as respondents in the final decree proceedings. Only in the said circumstances, the petitioners who are the respondents in the above referred final decree proceedings, preferred this Civil Revision Petition to set aside the order dated 24.06.2013, passed in I.A.No.631 of 2013 in O.S.No.690 of 1987.

4. The learned counsel who appeared on behalf of the petitioners would contend that the learned Additional District Munsif erred in passing the preliminary decree by allowing the share to the petitioners. He further submitted that the late Sadayan, who is the original owner of the suit property was died after leaving six daughters and two sons as his legal heirs. But after leaving two daughters ie., Lakshmi and Kavary, the plaint has been filed by the respondents and others before the learned Additional District Munsif, Namakkal. Therefore, the preliminary decree passed in favour of the respondents and others is violative one. Further he would contend that the learned trial Judge failed to consider the apportionment of shares.

5. On the other hand, the learned counsel appearing on behalf of the respondents would contend that instead of filing an application to set aside the preliminary ex parte decree, filing the present Civil Revision Petition as against the application filed for passing final decree is not maintainable and thereby the present revision petition filed by the petitioners is liable to be dismissed.

6. Submissions made by the learned counsel appearing on either side are considered.

7. Since the application filed by the respondents before the Court below is under Order 26 Rules 13 & 14 of C.P.C., with the prayer to pass a final decree in the partition suit, it is necessary to see the above said provisions for deciding the present revision petition. The Order 26 Rules 13 & 14 of C.P.C., reads as follows :-

"13. Commission to make partition of immovable property— Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. Procedure of Commissioner— (1)

The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directly by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The commissioner shall then prepare and sign a report or the Commission (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit."

8. The said Rules elicited the fact that after passing a preliminary decree, the duty vested with the Court is only to appoint an Advocate Commissioner. The said provisions also elicited the terms as about the preparation of report by the Advocate Commissioner. Except the same, in the application filed under Order 26 Rules 13 & 14 of C.P.C., the Court cannot grant any extra relief more than that the relief granted in the preliminary decree.

9. In the said circumstances, instead of filing application to set aside the preliminary exparte decree dated 07.02.1992, the petitioners have approached this Court to quash the final decree proceedings. So, the stand taken by the petitioners to set aside the final decree proceedings by way of filing the present Civil Revision Petition is not at all maintainable.

10. Further on going through the grounds raised by the petitioners in this present revision petition, it is necessary to look into the matter that as claimed by the petitioners, the original owner of the suit property is having six daughters and two sons. If it is true, the petitioners will definitely prejudice over the preliminary exparte decree. Hence, the liberty is given to the petitioners to file an application to set

aside the preliminary exparte decree, within a period of 30 days from the date of the receipt of a copy of this Order. The learned Additional District Munsif, Namakkal is directed to consider and pass appropriate order, if any application filed by the petitioners to set aside the preliminary exparte order.

11. With the above directions, this Civil Revision Petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

18.09.2019

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

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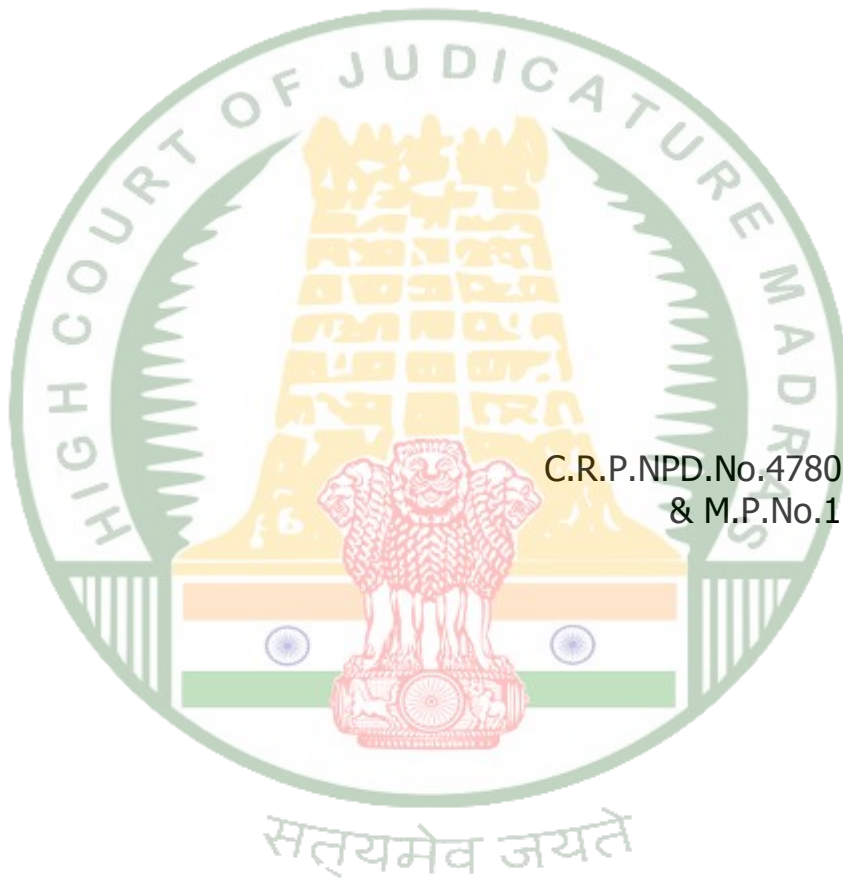
To

The Additional District Munsif Court,
Namakkal.

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R.PONGIAPPAN, J.

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