



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 12.11.2019

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P.(NPD) (MD)No.2196 of 2011

and

M.P.(MD)No.1 of 2011

WEB COPY

1.R.M.Sevugan Chettiar
2.R.M.Lakshmanan
3.R.M.Alagappan
4.R.M.Ramanathan
5.Unnamalai Achi
6.S.Muthu

.. Petitioners/Petitioners/Respondents
/ Respondents / Defendants
Vs.

1.Annamalai Chettiar
2.Lakshmi Achi

3.Kasthuri .. Respondents/Respondents/Petitioners
(1st Respondent for himself Petitioners / Plaintiffs
and as Power Agent for R2 & R3)

Prayer : This Civil revision petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order dated 23.08.2011 passed in E.A.No.132 of 2010 in E.P.No.100 of 2009 in I.A.No.133 of 2008 in O.S.No.149 of 1953 on the file of the learned Subordinate Judges, Devakottai.

For Petitioner : Mr.T.S.Mohammed Mohideen
For Respondents : Ms.A.L.Gandhimathi

ORDER

The above revision petition arises against the dismissal of Section 47 application filed by the revision petitioners herein.

2.The revision petitioners are the legal heirs of the deceased first defendant. The facts in nut shell, which are necessary to dispose of the case are as follows:-

(i)The suit for partition was filed by one Venkatachalam Chettiyar and others against Sevugan Chettiar. A preliminary decree was passed on 24.12.2004 on the basis of compromise entered into between the parties. In the said compromise, the fourth item of the A schedule property was kept in common with each being entitled to half share. Thereafter, it appears that the petitioners/decreed holders filed I.A.No.133 of 2008 for passing of final decree and the said final decree petition was also ordered on 03.07.2009. Though contest by the revision petitioners herein is against the final decree proceedings, there is no further appeal filed by the revision petitioners.



(ii)Consequent to the passing of final decree, the respondents herein filed an petition in E.P.No.100 of 2009 seeking delivery of their share in the suit property. The said petition was also ordered on 15.04.2010 and there is no revision against that order. Four months from the date, on which it is ordered, the revision petitioners had come out with a petition under Section 47 of CPC to set aside the orders passed in I.A.No.133 of 2008 and consequently E.P.No.100 of 2010. The said petition was dismissed by the learned Sub Judge, Devakotati, Sivagangai District, by his order dated 23.08.2011. Challenging that order, the revision petitioners are before this Court.

3.Heard the learned counsel and perused the papers.

4.Considering the fact that the revision petitioners have not taken any steps whatsoever to challenge the final decree and the subsequent order in execution in E.P.No.100 of 2010, the petitioners have no legs to stand in the present civil revision petition. This Court is of the view that the learned Subordinate Judge has rightly dismissed the petition under Section 47 of CPC. Section 47 application is maintainable only when the execution proceedings are pending. In the instant case, the said petition under Section 47 of CPC was filed, only after the execution proceedings came to an end. The Court had by then become *functus officious*.

5.I do not find any infirmity in the order passed by the Court below. Accordingly, the Civil Revision Petition stands dismissed. No Costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

Mrn

To

The Subordinate Judge, Devakotati, Sivagangai Dist

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-97798[F] dated 13/11/2019
+1 CC to M/s.T.S. MOHAMED MOHIDHEEN, Advocate (SR-98049[F] dated
13/11/2019)

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SMA/18/12/19/2P/4C