



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 222 of 2016

and

C.M.P. (MD) No. 967 of 2016

1.T.Lourthusamy (Died)
2.Rakkinimary
3.Mary Vasantha Priya
4.Silviya Grace

.. Petitioners/2nd Respondent/LR's of
the Plaintiff

(AA2 to A4 are brought on record as LRS of deceased sole
petitioner vide Court dated 11.09.2018)

Vs.

1.T.Mangalamary
2.T.Julia
3.T.John Bosco Xavier

...Respondents/Petitioners/LRs of the
Plaintiff

4.Mariyanatham

.. Respondent/1st Respondent/Defendant

Prayer: This Civil revision petition is filed under Article 227 of
the Constitution of India, to set aside the order and final decree
in I.A.No.410 of 2013 in O.S.No.99 of 1989 dated 28.04.2015 on the
file of the Principal Sub Court, Thanjavur.

For Petitioners
For Respondents

: Mr.R.Rajaraman
: Mr.R.Vijaya Kumar

ORDER

Heard Mr.R.Rajaraman, learned counsel appearing for the
petitioners and Mr.R.Vijaya Kumar, learned counsel appearing for
the respondents.

2.This Civil Revision Petition has been filed against the
order passed in I.A.No.410 of 2013 in O.S.No.99 of 1989 dated
28.04.2015 on the file of the learned Principal Sub Judge,



3. The first petitioner herein is the legal heir of the plaintiff, the respondents 1 to 3 herein are the legal heirs of the plaintiff and the fourth respondent herein is the defendant in the suit. The petitioners 2 to 4 herein are the legal heirs of the first petitioner. One Anthoni Ammal filed a suit in O.S.No.99 of 1989 for a relief of partition and for an allotment of $\frac{1}{2}$ share in the suit property. The trial Court passed a preliminary decree for partition and dismissed the suit in respect of future profits under Order 20 Rule 18 of C.P.C. The respondents 1 to 3 filed a petition in I.A.No.410 of 2013 to pass final decree in terms of the preliminary decree. The fourth respondent filed a petition in I.A.No.507 of 2013 to receive compromise memo filed along with the accompanying petition. At the stage of final decree, compromise petition was allowed by the trial Court. The petitioners filed a revision petition against the final decree petition in C.R.P.(MD) No.1317 of 2014. This Court on 19.12.2014, has passed a specific order that the trial Court has to allot $\frac{1}{8}$ th share in favour of the revision petitioners in suit item no.9 of the suit properties. There is a specific observation made by this Court that the memorandum of compromise entered between parties was not binding upon the revision petitioners which reads as follows:

"5. When the revision petitioner is entitled to $\frac{1}{8}$ share in the suit properties, the Trial Court is directed to allot $\frac{1}{8}$ th share to the revision petitioner in respect of the suit properties. It is needless to state that the memorandum of compromise entered into between the parties on 25.11.2013 shall not bind the revision petitioner. With these observations, the civil revision petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

4. On the side of the petitioners, it is stated that though there is a positive direction given in favour of the petitioners, the trial Court wrongly concluded that C.R.P.(MD) No.1317 of 2014 was dismissed. Though the petitioners filed a memo before the Court Commissioner, he refused to allot a share to the petitioners stating that he was not given any direction from the Court to allot a share to the petitioners. The trial Court in its order in I.A.No.710 of 2013 in paragraph no.7 has observed that this Court rejected the petition of the petitioners and the petitioners have to file a separate final decree petition and they cannot claim any share in this final decree petition.

5. A perusal of the records reveals that the plaintiff has got $\frac{1}{8}$ th share in the properties and the Judgment and decree passed by the trial Court is confirmed by this Court in S.A.No.573 of 1990. A final decree petition was filed by the respondents 1 to 3. A Court Commissioner was appointed. Against which the petitioner filed I.A.No.507 of 2013 to receive the compromise memo



and the same was allowed by the trial Court. Against which the petitioners filed C.R.P.(MD)No.1317 of 2014 and this Court passed a specific order directing the trial Court to allot 1/8th share to the petitioners. The trial Court order passed in I.A.No.410 of 2013 reveals that the Sub Court wrongly interpreted the order of this Court and made some observation. The revision petition filed by this petitioners was disposed of and without considering that a specific direction was given to allot 1/8th share to the petitioners, the trial Court has directed the petitioners to file separate final decree petition. The order passed by the trial Court is completely against the order of this Court passed in C.R.P(MD)No.1317 of 2014.

6.Hence, the order passed by the trial Judge is hereby set aside and the trial Court is directed to re-issue the warrant to the Commissioner and direct him to allot 1/8th share to the petitioners herein and then to pass final decree after allotting 1/8th share to the petitioners. Seperate Court fee, if necessary is to be collected form the petitioners.

7.With the above directions, this Civil Revision Petition is **allowed** by setting aside the order passed in I.A.No.410 of 2013 in O.S.No.99 of 1989 dated 28.04.2015 on the file of the learned Principal Sub Judge, Thanjavur. No Costs. Consequently, C.M.P.(MD) No.965 of 2016 is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

The Principal Sub Judge, Thanjavur.

+1 CC to M/s.R.RAJARAMAN, Advocate (SR-64738[F] dated 02/05/2019)

MRN

C.R.P. (PD) (MD) No.222 of 2016
30.04.2019

_KM/ (04.06.2019) 3P 3C