



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2019

CORAM:

THE HONOURABLE **MR.JUSTICE KRISHNAN RAMASAMY**

C.R.P. (MD)No.1612 of 2019

and C.M.P. (MD)No.8462 of 2019

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L.P.Narayanan : Petitioner/Petitioner/3rd Defendant
Vs.

1.Ramasubramanian
2.Rajagopalachari (died)
3.L.P.Mohanram
4.Maheswari
5.Geetha
6.Ganesh
7.Kalavathi
8.Jothi
9.Ramesh
10.Vijaya

: Respondents/Respondents/Plaintiffs
1,2,4 to 10 Defendants

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., to call for the records and set aside the fair and decreetal order dated 08.07.2019 passed in I.A.No.58 of 2019 in O.S.No.58 of 2011 on the file of the Sub Court, Melur and allow this Civil Revision Petition with costs throughout.

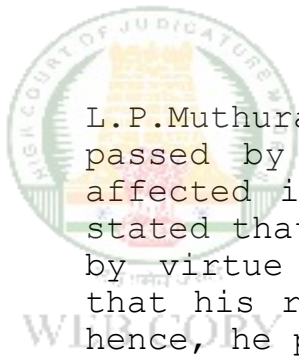
For Petitioner : Mr.R.Maheswaran
For R1 : Mr.V.Nagendran

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 08.07.2019 passed in I.A.No.58 of 2019 in O.S.No.58 of 2011 on the file of the Sub Court, Melur.

2.The above said Interlocutory Application has been dismissed by the Court below holding that the revision petitioner herein is also one of the brother of the plaintiff and as per the ex-parte decree, the revision petitioner is entitled to 1/5th share and hence, he is no way going to affect by virtue of the preliminary decree passed by the Court below. Challenging the above order, the revision petitioner filed the present civil revision petition.

3. The learned counsel appearing on behalf of the revision petitioner submitted that there are five brothers namely, L.P.Ramasubramanian, L.P.Rajagopalacharry (died), L.P.Muthuraman (died), L.P.Mohanram, L.P.Narayanan (revision petitioner herein). The respondents 4 to 9 are the legal heirs of the deceased



L.P.Muthuraman. He further submitted that if the ex-parte order passed by the Court below is not set aside, his right will be affected in the final decree proceedings. Though the Court below stated that the revision petitioner herein is no way going to affect by virtue of ex-parte decree, the revision petitioner apprehends that his right over the property in question, will be affected and hence, he prays for setting aside the order of the Court below.

4.The learned counsel appearing on behalf of the first respondent submitted that by virtue of ex-parte decree, the revision petitioner herein will not be affected, since the Court below ensure 1/5th share. Therefore, at the time of filing an application for final decree proceedings, the first respondent / plaintiff will give notice to the revision petitioner. In such a case, the revision petitioner may raise all the objections in the final decree proceedings. He further submitted that the first respondent has no objections, if the revision petitioner filed any application to the final decree proceedings.

5.The Court below, while dismissing the petition in I.A.No.58 of 2019 in O.S.No.58 of 2011, recorded that the revision petitioner herein is also one of the brother of the plaintiff and as per the ex-parte decree, he is entitled for 1/5th share and the Court below protected the revision petitioner's right.

6.Heard the learned counsel appearing for the petitioner and the first respondent.

7.As per the ex parte decree, the revision petitioner herein is entitled for 1/5th share in the suit schedule property. Even if the suit is restored, he is entitled for 1/5th share and further, he has not made any case before this Court to substantiate his contention that he is entitled for more than 1/5th share. When that being the case, the Court below has rightly dismissed the application to set aside the ex parte decree, upholding the right of the revision petitioner as that he is entitled for 1/5th share in the suit schedule properties. Therefore, this Court do not find any infirmity in the order passed by the Court below.

8.Further, in the present case, as rightly contended by the learned counsel appearing for the respondent that the revision petitioner is entitled to file an application for final decree proceedings since as per the ex parte decree, he is entitled for 1/5th share in the suit schedule properties.

9.In view of the above, this Court also directs the Sub Court, Melur to give proper notice to the revision petitioner, in the event of filing of an application for final decree proceedings by any of the defendants or any persons, who are parties to the suit, so as to protect the petitioner's right.



10. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS III)

Sub Assistant Registrar (CS)

gns

To

The Sub Judge, Melur.

C.R.P. (MD) No. 1612 of 2019
20.09.2019

KK/SAR/30.10.2019/3P-2C/