

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition(PD) Nos.2166 of 2010 & 4380 of 2013

and

M.P.No.1 of 2010 & 1 of 2013

Senrayan ... Petitioner in CRP 2166/2010
1. Chandran
2. Siddhaiyan ... Petitioners in CRP.4380 of 2013
Vs
1. Chandran
2. Siddhaiyan ... Respondents in CRP.2166 of 2010
Senrayan ... Respondent in CRP.NO.4380 of 2013

Prayer in CRP.2166 of 2010 : Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decreetal order dated 24.10.2009 in I.A.No.257/2009 in I.A.No.155 of 2008 in O.S.No.1696 of 1996 on the file of the II Additional District Munsif Court, Salem.

Prayer in CRP.4380 of 2013 : Civil Revision Petition filed under Section 227 of the Constitution of India to set aside the fair and

decreetal order dated 27.06.2011 in I.A.No.258 of 2008 in I.A.No.155 of 2004 in O.S.No.1696 of 1996 on the file of the II Additional District Munsif Court, Salem.

For Petitioner : Mr.D.Shivakumaran,
in CRP 2166/2010
& respondent in
CRP 4380 of 2013

For Respondents : Mr. S.Kalyanaraman
in CRP 2166/2010
& Petitioners in
CRP 4380 of 2013

ORDER

The petitioner in CRP No.2166 of 2010 has filed a suit for partition, which was originally numbered as O.S.No.575 of 1991 on the file of the Subordinate Court, Salem for partition. Subsequently, the suit was transferred and renumbered as O.S.No.1696 of 1996 on the file of the II Additional District Munsif, Salem and preliminary decree was passed in the said suit on 13.01.1999 and the plaintiff was allotted 1/4 share. Challenging the same, one Karimalai, who is the second defendant in O.S.No.1696 of 1996 filed an appeal in A.S.No.33 of 1999 and the same was dismissed for default on 03.03.2001. Hence, there is no appeal as against the judgment in O.S.No.1696 of 1996.

2. Subsequently, the respondents in CRP.No.2166 of 2010 had filed a suit in O.S.No.669 of 2001 for bare injunction and the same was dismissed on 20.02.2003. Against which, they have filed an appeal in A.S.No.42 of 2003 on the file of the Principal District Court, Salem and the same was also dismissed on 25.08.2003 and liberty was given to them to work out their remedy by instituting a separate comprehensive suit for partition. However, their sale deed was confirmed. Therefore, based on that observation, the respondents were impleaded as respondents 9 and 10 in the final decree application. During the pendency of the Final Decree Application, the respondents have filed two applications. One application in I.A.NO.257 of 2009 is to lead the oral evidence to prove their share in the suit property and the same was allowed on 24.10.2009 and another application in I.A.NO.258 of 2009 to declare their shares, which their vendor/first defendant was entitled in the suit property and also to pass separate preliminary decree and the said petition was dismissed on 27.06.2011. Challenging the order passed in I.A.No.257 of 2009, the plaintiff filed revision in CRP.No.2166 of 2010. Challenging the dismissal order passed in I.A.NO.258 of 2009, the newly impleaded defendants filed CRP No.4380 of 2013.

3. Heard both sides and perused the materials available on records carefully.

4. Admittedly, the petitioner in CRP.No.2166 of 2010 has filed the suit in O.S.No.575 of 1991 on the file of the Subordinate Court, Salem. Subsequently, it was transferred and renumbered as O.S.No.1696 of 1996 on the file of the II Additional District Munsiff, Salem. Though in the said suit, preliminary decree was passed on 13.01.1999, since the first defendant in the suit had already sold the property even prior to the filing of the suit to the respondents in CRP.No.2166 of 2010, they were impleaded as respondents 9 and 10 in the Final Decree Application. Thereafter, they have filed application in I.A.No.257 of 2009 for adducing oral evidence to prove their share in the suit property for passing separate preliminary decree and the same was allowed on 24.10.2009. Against which, CRP.2166 of 2010 has been filed by the plaintiff. The another application filed by the impleaded respondents 9 and 10 in I.A.No.258 of 2008 to declare their share, which their vendor was entitled in the suit property, was dismissed .

5. Even the trial Court in the judgment has held that the petitioner/plaintiff in the suit and the defendants 1 to 3 in the said suit are entitled for 1/4 share. Admittedly, the petitioners in CRP NO.4380 of 2013 herein as respondents 9 and 10 have been impleaded in the final decree application. But, there is no preliminary decree passed to the first defendant. Therefore, no prejudice would be caused to the

plaintiff, if another preliminary decree is passed to declare the share of the first defendant enabling the respondents 9 and 10 herein to get their apportionment of the property during the final decree.

6. It is a settled preposition of law that any numbers of preliminary decrees can be passed. Admittedly, preliminary decree has been passed for the petitioner/plaintiff alone. No preliminary decree has been passed to the defendants 1 to 3. Since, the defendants 1 to 3 have not claimed their share and asked for any preliminary decree by paying the court fee, the Court has not passed the preliminary decree on the share of the defendants 1 to 3. However, now the purchaser of the first defendant has filed the application to declare their shares, which their vendor/first defendant was entitled to and therefore, legally there is no impediment to pass another preliminary decree and no prejudice would be caused to the plaintiff in the suit. There is no prohibition to pass supplementary preliminary decree declaring the share of the first defendant/ purchaser of the respondents 9 and 10.

7. As far as the C.R.P.No.2166 of 2010 is concerned, since already after full fledged trial, the trial Court held that the plaintiff and the defendants 1 to 3 are entitled to 1/4 share each. Therefore, no need to adduce oral evidence at the stage of final decree. Therefore,

passing of preliminary decree with reference to the 1/4 share of the first defendant is enough and there is no need to lead oral evidence. As far as the apportionment of the share is concerned, the respective parties can work out their remedy in the final decree application since the petitioners and respondents in CRP 2166 of 2010 and CRP 4380 of 2013 are already parties in the final decree proceedings.

8. Accordingly, C.R.P No.2166 of 2020 is allowed and the order passed by the trial Court in I.A.No.257 of 2009 is set aside. C.R.P.NO.4380 of 2013 is allowed and the order passed in I.A.No.258 of 2008 is set aside. The trial Court is directed to pass a preliminary decree to declare the separate preliminary decree/supplementary preliminary decree for the 1/4 share of the first defendant. The respondents 9 and 10 have to pay the Court fee in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

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mrp

To

1. The II Additional District Munsif Court, Salem.

2. The Section Officer, V.R. Section, High Court, Madras

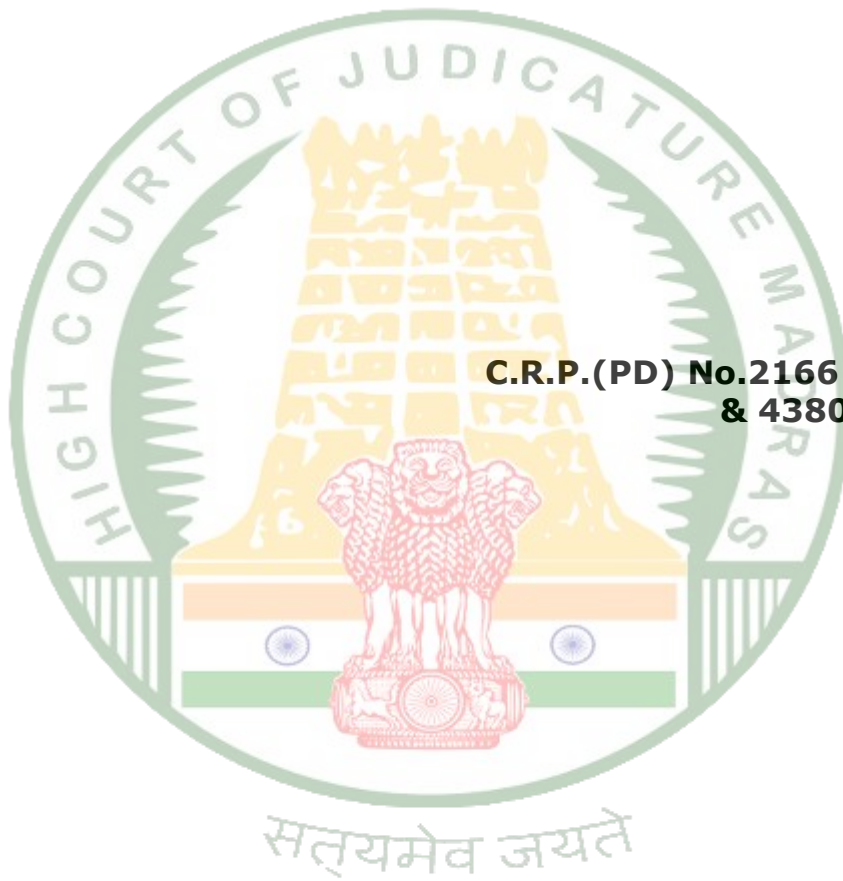


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C.R.P.PD Nos.2166 of 2010 & 4380 of 2013

P.VELMURUGAN,J.

mrp



**C.R.P.(PD) No.2166 of 2010
& 4380 of 2013**

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