

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.No.2957 of 2011

Zohara Bi

...Petitioner/Plaintiff

Versus

1.Elias

Rep by power Agent S. Mahbooba

...1st Respondent/5th Defendant

2.Fathima Bi (deceased)

3.Rahmat

4.Fakir Mohamed

5.Aysha Bi

6.Abdul Gani

7.Sheik Mohideen

8.Zakaria

9.Mustafa

10.Hussain

...Respondents 2 to 10/
Defendants 1-4 & 6-10

(4th Respondent remained exparte petition dismissed as not pressed as against 7 to 10 respondents before the Trial Court
Petitioner is giving up R4, 7 to 10 in above Civil Revision)

PRAYER: This Civil Revision Petition has been filed under Section 227 of the Constitution of India to set aside the fair and decretal order dated 18.01.2011 in I.A.No.12629 of 2010 in O.S.No.5082 of 1987, on the file of the XIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Mubarak Basha

For Respondents: Mr.K.V.Sundararajan

O R D E R

This Civil Revision Petition has been filed against the order passed by the XIII Assistant City Civil Court, Chennai, in I.A.No.12629 of 2010 in O.S.No.5082 of 1987, dated 18.01.2011.

2 The learned counsel for the respondents would contend that the revision petitioner has filed a suit in O.S.No.5082 of 1987, before the learned XIII Assistant City Civil Court,

Chennai, for partition and a preliminary decree was granted, whereby, share in the land alone was granted. But, there is a clear finding that the building was put up by the fifth defendant therein/seventh respondent herein. However, in the decree, it was drafted as if the share was also granted in the building and accordingly, the fifth defendant in the suit filed an application in I.A.No.12629 of 2010, before the learned XIII Assistant Judge, City Civil Court, Chennai, to amend the preliminary decree made in the suit as per the judgment passed, in respect of the share of the plaintiff and amending the name of the fifth defendant as Thiru Eliyas instead of Tmt.Eliyar and the same was allowed. As against the same, the revision petitioner has preferred this Civil Revision Petition.

3 Heard both sides and perused the documents placed on record.

4 On a perusal of the records, it is seen that there is no specific finding rendered by the Trial Court, while, awarding the preliminary decree. The Trial Court has held that the plaintiff is entitled for a share only in the land but not in the building. However, as a mistake as crept in while drafting the decree, the same was ordered and the name of the fifth defendant has been amended as Thiru Eliyas instead of Tmt.Eliyar and hence, I do not find any error warranting interference by this Court since, the decree has to be drafted in accordance with judgment and in view of the specific finding in the judgment regarding non availability of the share in the building and specific finding that fifth defendant alone had put up superstructure and hence, I do not find anything merits in this Civil Revision Petition.

5 In the result, the Civil Revision Petition stands dismissed and the order passed by the XIII Assistant City Civil Court, Chennai, dated 18.01.2011 in I.A.No.12629 of 2010 in O.S.No.5082 of 1987 is confirmed. No costs.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

dua

To

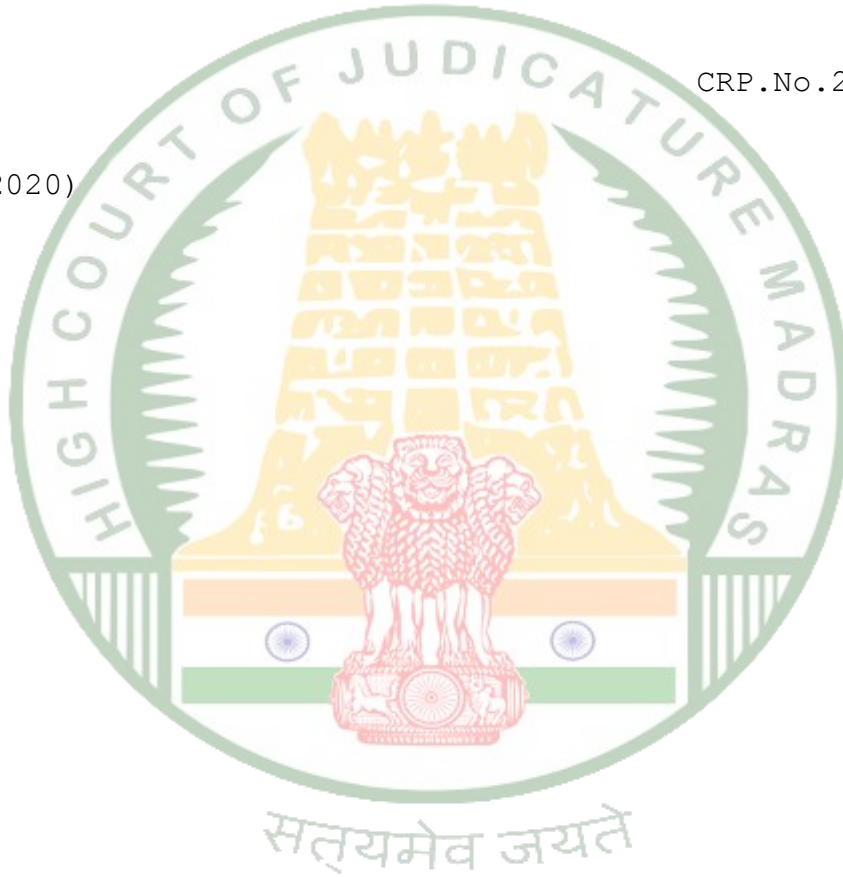
1.The XIII Assistant Judge
City Civil Court, Chennai.

2.The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K.V.Sundararajan, Advocate sr 1392.

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BR(CO)
SP(20/02/2020)



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