

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD)No.4776 of 2011

and

M.P.No.1 of 2011

R. Krishnamurthy ... Petitioner

Versus

1. Minor Kaveri

2. Tamilselvi ... Respondents

Petition filed under Section 115 of CPC against the order passed in I.A.No.2018 of 2010 in I.A.No.1326 of 2004 in O.S.No. 1208 of 1995 dated 27.06.2011 on the file of the Principal District Judge, Coimbatore and permit the Petitioner herein to take part in the final decree proceedings by setting aside the order of appointment of Advocate Commissioner.

For Petitioner : Mr.V. Manohar

For Respondents: No appearance

ORDER

Though the notice was ordered on 09.12.2011 and the respondents were served, there is no representation for them.

2. This Civil Revision Petition is filed against the order dated 27.06.2011 passed in I.A.No.2018 of 2010 in I.A.No.1326 of 2004 in O.S.No.1208 of 1995 on the file of the Principal District Judge, Coimbatore.

3. The respondents herein filed a suit in O.S.No.1208 of 1995 on the file of the Principal District Judge, Coimbatore for partition. A compromise was arrived at resulting in passing a preliminary decree. The final decree proceedings had been initiated in I.A.No.1326 of 2004 and when the Advocate Commissioner was appointed to inspect the property for proper division by metes and bounds, the present petitioner filed I.A.No.2018 of 2010 to set aside the ex parte order of appointment of commissioner dated 22.12.2003 and allow him to contest in the final decree proceedings on the ground that he purchased the property even before filing of the said suit from his vendor in title on 14.02.1996 while his vendor has purchased the property on 18.08.1994 from the first respondent in the said suit based upon the decree in O.S.No.452 of 1993 on the file of II Sub Judge, Coimbatore. The application filed by the respondents herein in I.A.No.1326 of 2004 for passing final decree was allowed prior to the impleadment of the petitioner herein as a party respondent to the final decree proceedings. By the order dated 27.6.2011, the learned Principal District Judge ordered that the

petitioner could continue the proceedings from the stage of his impleadment and that he could not be permitted to raise the objection with regard to the final decree in respect of his allotted portion, namely, to challenge the final decree on merits. Impugning the same, the present Civil Revision Petition has been filed.

4. Heard the counsel for the petitioner.

5. The learned counsel for the petitioner would submit that in respect of the very same suit property arising out of the same family, there was a partition decree in O.S.No.452 of 1993 on the file of II Sub Judge, Coimbatore on 27.08.1993 whereby Mr.Senthil Kumar @ Karuppuswamy, the first respondent in O.S.No.1208 of 1995 was allotted 37.5 cents towards his share. The said decree was a compromise decree. Thereafter, from and out of the land allotted to the said person, he sold 5½ cents to Ms.Geethamani on 18.08.1994, from whom the present petitioner purchased the very same extent of 5½ cents by a registered sale deed dated 14.02.1996. Suppressing the earlier partition decree, which had attained finality and when the predecessor in title of the petitioner had purchased the property even before the filing of the suit, the clog imposed by the Principal District Judge is unjust.

6. I find force in the contention of the learned counsel for the petitioner. It appears that in respect of the very same suit property, there was a partition as early as 27.08.1993, which is a compromise decree. The predecessor in title of the petitioner purchased the property on 18.08.1994 much before the institution of the said suit and hence, this Court is of the considered view that the respondents have indulged in committing fraud upon the Court.

7. Hence, the order passed by the learned Principal District Judge, Coimbatore dated 27.06.2011 in I.A.No.2018 of 2010 in O.S. No.1208 of 1995 is set aside and the petitioner is directed to take part in the final decree proceedings and agitate his rights as per the merits of this case. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

सत्यमेव जयते

07.01.2020

bga
Speaking Order: Yes/No

To
The Principal District Judge, Coimbatore

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RMT.TEEKAA RAMAN, J.

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