

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.4657 of 2013

and

M.P.No.1 of 2013

1.T.Kannan

2.Minor.Poornima

3.Minor.Prakash

(Minors are represented by their

NF and Father T.Kannan) ... Petitioners/Respondents 1 to 3/
Defendants 1 to 3

Vs.

1.Prabha ...Respondent/Petitioner/Plaintiff

2.Punitha ...Respondents/4th Respondent/
4th Defendant

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the Petition and Docket order dated 14.03.2013 passed in I.A.No.602 of 2012 in O.S.No.303 of 2008 on the file of District Munsif Court, Krishnagiri.

For Petitioners : Mr.R.Venkata Varadhan
for Ms.C.Uma

For Respondents : No appearance

O R D E R

The matter is heard through Video Conferencing.

This Civil Civil Revision Petition is filed to set aside the petition and docket order dated 14.03.2013 passed in I.A.No.602 of 2012 in O.S.No.303 of 2008 on the file of District Munsif Court, Krishnagiri.

2.The petitioners are defendants 1 to 3 and 1st respondent is the plaintiff and the 2nd respondent is the 4th defendant in O.S.No.303 of 2008 on the file of District Munsif Court, Krishnagiri. The 1st respondent filed the said suit for

declaration to declare the gift settlement deed dated 06.09.2007 executed by the 1st petitioner in favour of 3rd petitioner as null and void and for partition and separate possession of 1/5th share of 1st respondent into suit property and to appoint a Commissioner directing him to divide the suit properties into five equal shares by metes and bounds with reference to good and bad soil, allot one such share to 1st respondent and put her in separate possession of the same and directing the petitioners to pay mesne properties from date of suit at the rate of Rs.10,000/- to 1st respondent per annum till partition is effected and the 1st respondent is put in separate possession. The petitioners filed written statement. After contest, by judgment and decree dated 13.12.2010, the preliminary decree was passed in the suit holding that Gift deed which is the subject matter of the suit is null and void and the 1st respondent is entitled to 1/5th share in the suit property.

2(a).The 1st respondent filed I.A.No.602 of 2012 for appointment of Advocate Commissioner for division of suit property as per the preliminary decree into five equal shares. The petitioners did not file counter affidavit and I.A.No.602 of 2012 was ordered. Mr.I.Hariputhiran, Advocate was appointed as Commissioner to visit the suit property along with the help of Surveyor and divide the suit property into five equal shares by metes and bounds and directed to file a detailed commissioner report alongwith plan with particulars with reference to allotment of shares to the parties.

3.Against the said order dated 14.03.2013 passed in I.A.No.602 of 2012 in O.S.No.303 of 2008, the petitioners have come out with the present Civil Revision Petition.

4.The learned counsel appearing for the petitioners submitted that petitioners have filed Second Appeal against the preliminary decree and the same is pending. The Learned Judge ought to have closed the application for final decree due to pendency of the Second Appeal. The petitioners 2 and 3 became major and the petitioners ought to have filed an application for declaring them as major. The counsel engaged by the petitioners in the final decree application did not inform about the proceedings and petitioners could not file counter affidavit. The petitioners have good case on merits and I.A. filed by the 1st respondent was allowed only on the ground that petitioners have not filed counter affidavit and not on merits and prayed for allowing the Civil Revision Petition.

5.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

6. Heard the learned counsel appearing for the petitioners and perused the entire materials on record.

7. The petitioners are challenging the order passed in I.A.No.602 of 2012 filed by the 1st respondent for passing of final decree, appointing an Advocate Commissioner for partition of the suit property as per the preliminary decree. It is the case of the petitioners that this Court has granted interim stay in the Second Appeal filed by them, but at the time of arguments, the learned counsel appearing for the petitioners submitted that this Court, at the time of admission of Second Appeal granted an interim order directing the learned Judge to go on with the final decree proceedings and not to pass any final order in the final decree application.

8. The petitioners have not filed the interim order granted by this Court in the Second Appeal. The petitioners in their affidavit are blaming their counsel for not filing counter in the final decree application. This Court and the Hon'ble Apex Court in number of cases have deprecated the practice of blaming advocates for adverse orders passed against them. The petitioners ought to have been vigilant enough in pursuing their case by regularly contacting their advocate. From the order of the learned Judge, it is seen that the petitioners were given opportunity to file counter and only when the petitioners failed to file counter, the learned Judge has appointed an Advocate Commissioner to inspect the suit property and has not passed any final order in the final decree application.

9. It is the contention of the learned counsel appearing for the petitioners that this Court has directed the learned Judge not to pass final order, but final decree proceedings may go on. In I.A. No.602 of 2012 filed by the respondent for final decree, the learned Judge has only appointed an Advocate Commissioner viz., Mr.I.Hariputhiran to visit the suit property along with the help of Surveyor and divide the suit property into five equal shares by metes and bounds and directed to file a detailed commissioner report along with plan with particulars with reference to allotment of shares to the parties.

10. In the I.A., the learned Judge has not passed any final orders. In view of the same, there is no irregularity or illegality in the order passed by the learned Judge warranting interference by this Court.

11. The learned counsel appearing for the petitioners has not produced any order passed by this Court in the Second Appeal. It is open to the petitioners to produce the order of this Court granting interim order in the Second Appeal before the Learned Judge, if any, for further proceedings in the final decree

application.

12.In the result, this Civil Revision Petition is dismissed. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

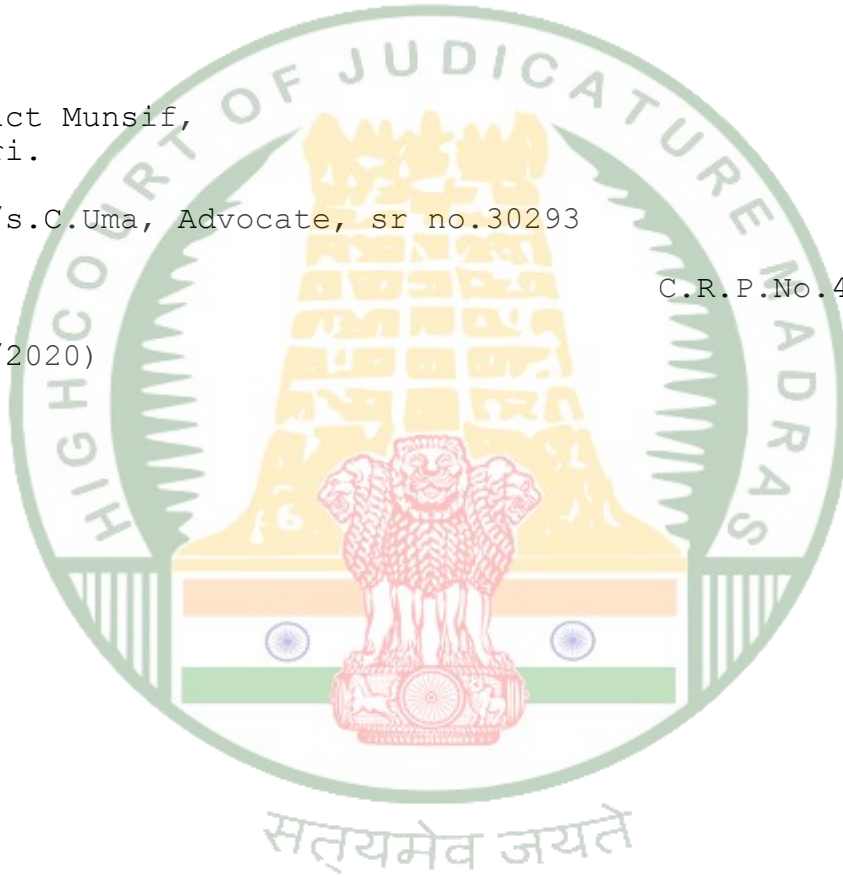
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To
The District Munsif,
Krishnagiri.

+1cc to M/s.C.Uma, Advocate, sr no.30293

C.R.P.No.4657 of 2013

RLD(CO)
RMP(21/10/2020)



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