

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 10.02.2020

Pronounced on : 14.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.2954 of 2013
and
MP.No.1 of 2013

Santhi ... Petitioner

Versus

1.Palaniammal
2.Palanisamy (deceased)
3.Venkatesh (deceased)
4.Muthupillai
5.Pavayee ... Respondents

Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the order dated 04.07.2012 passed in I.A.No.1436 of 2011 in O.S.No.240 of 2002 on the file of the District Munsif Court, Sankari.

For petitioner : Mr.C.Kulanthaivel

For Respondents : Mr. N. Monakaran (for R1 & R4)
: Died – R2 & R3

WEB ORDER

Heard both sides and perused the materials available on records.

2.The suit was instituted by the first respondent for partition seeking
¼ share of the property and for consequential permanent injunction.

3.The relationship between the parties are as under:-

(a) The plaintiff/1st respondent herein is the daughter born through the 1st defendant and his first wife/4th defendant/4th respondent herein.

(b) The 1st defendant is the father of the plaintiff/first respondent and the 3rd defendant/revision petitioner.

(c) The 5th defendant is the second wife of the 1st defendant/2nd respondent herein

(e) The 2nd defendant/3rd respondent herein and the 3rd defendant/revision petitioner herein are the daughter and son of the 1st defendant/Palanisamy and the 4th defendant/Muthupillai.

4.The suit property is admittedly an ancestral property, which was originally in possession of the first defendant. The first defendant is having two wives by name Muthupillai and Pavayee. The said Muthupillai has got one female child through the first defendant by name Palaniammal, who is the plaintiff. The second Pavayee through Palanisamy Gounder had one son by name Venkatesh (second defendant) and one daughter by name Santhi (third defendant).

5.In the suit, an exparte preliminary decree was passed on 10.01.2007. Thereafter, the first respondent/plaintiff filed an application in I.A.No.1128 of 2008 for passing final decree in terms of the preliminary decree. During the pendency of final decree proceedings, the 1st defendant/father of the revision petitioner died on 17.10.2008. The 2nd

defendant/Venkatesh (deceased) son born through second wife (5th defendant) of first defendant died on 22.06.2011. On their death, since the share of the plaintiff and other defendants gets altered, the plaintiff withdrew the I.A. No. 1128 of 2008 on 20.09.2011. Subsequently, the other surviving legal heirs namely Muthupillai and Pavayee were impleaded. Thereafter, the plaintiff/first respondent filed I.A. No. 1436 of 2011 for passing a fresh preliminary decree in the nature of the supplementary decree in view of death of few of the defendants. In I.A. No. 1436 of 2011, the revision petitioner remained ex parte and the Trial Court, after taking into consideration the nature of the suit property and also taking note of the death of the 1st defendant/father and second defendant (Son) and the consequent devolution of the share on the plaintiff namely Palainiammal/1st respondent, ordered for issuance of fresh preliminary decree on 04.07.2012, the same is under challenge in this revision before this Court.

6. Learned counsel for the petitioner submitted that as ex-parte supplementary preliminary decree order was passed, an application was filed under Order IX and Rule 9 of CPC., however, as there was a delay of 1995 days the same is yet to be numbered and in other words, the petition to condone the delay of 1995 days for setting aside the ex parte decree, which is still in un-numbered stage.

7. On a perusal, it is seen that I.A.No.1436 of 2011 in O.S.No.240 of

2002 was allowed by which a supplementary preliminary decree was passed consequent upon the death of the 1st defendant and 2nd defendant.

8.The Trial court, taking note of the nature of the property, relationship between parties and death of the father and brother of the plaintiff, has rightly come to the conclusion that the quantum of share sought for by the plaintiff has expanded or altered and therefore, for re-assessing the quantum of share of the parties, passing a fresh preliminary decree is necessary. Furthermore, the final decree application was also withdrawn with an intention to seek for passing of fresh preliminary decree in view of the subsequent changes taken place, after passing of the preliminary decree. Hence, in view of the matter I do not find any merits on the contest of the case by the petitioner counsel. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

14.02.2020

(1/2)

Index : yes/no
Internet : yes/no
Speaking/Non-Speaking order
klt

To
The District Munsif Court, Sankari.

WEB COPY

CRP.(NPD).No.2954 of 2013

RMT.TEEKAA RAMAN,J.,

klr



Pre-delivery order in
CRP.(NPD).No.2954 of 2013
and
Mp.No.1 of 2013

14.02.2020
(1/2)

WEB COPY