

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) Nos.4000 and 3984 of 2018
and CMP No.22077 of 2018

M.O.H.Aslam Petitioner in both CRPs

Vs

1. M.O.H.Iqbal

A.M.S.Issack (died)

2. H.Najuminissa

3. Shakeela

4. Faisal

... Respondents in both CRPs

Common Prayer: The Civil Revision petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 24.09.2018 passed in I.A.Nos.48 and 49 of 2017 in I.A.No.737 of 2001 in O.S. No.207 of 1978 on the file of the Principal Sub Judge, Puducherry.

For Petitioner : Mrs.Chitra Sampath,
in both CRPs Senior counsel for
Mr.T.S.Baskaran

For Respondents
in both CRPs : Mr.R.Thiagarajan (for R1)

COMMON ORDER

The plaintiff who obtained a preliminary decree for dissolution and accounting in a suit filed by him in the year 1978 is before this Court, since all his attempts to get a final decree have been forestalled by the respondents.

2. A preliminary decree was passed in a suit for dissolution and accounting on 26.04.1999. An application for final decree was filed in I.A.No.737 of 2001. An order was passed on 03.03.2003 in the said I.A., appointing a Commissioner. Thereafter, there were several revision petitions at the instance of either of the parties to this Court. Finally in the year 2017, the petitioner filed I.A.Nos.48 and 49 of 2017 seeking to

condone the delay in filing the list of witnesses and for permission to examine the witnesses.

3. The learned Principal Subordinate Judge, Pondicherry who heard the application, allowed the same restricting the right to lead the evidence for the period between 1973 and 1978, namely the date of the filing of the suit on the ground that the preliminary decree restricts the right of the petitioner to seek accounting only up to 17.08.1978. Aggrieved by this restriction, the petitioner has come up with this revision.

4. I have heard Mrs.Chitra Sampath, learned Senior counsel appearing for Mr.T.S.Baskaran the petitioner and Mr.R.Thiagarajan, learned counsel appearing for the 1st respondent. The notice sent to respondents 2 to 4 has been returned as unclaimed. Hence service on them is deemed sufficient.

5. Mrs.Chitra Sampath would contend that the restriction imposed by the learned Subordinate Judge, Pondicherry is against the order of this

Court passed in several civil revision petitions. The Preliminary decree was granted in the year 1999. Thereafter the parties have approached this court several times. In CRP No.3685 of 2013, while allowing the said Civil Revision petition on the basis of memo filed and the concession given by the counsel for the revision petitioner namely the respondent herein, this Court had observed as follows:

“The said application shall stand dismissed without prejudice to the right of the first respondent herein (plaintiff) to contend in the final decree proceedings that the properties sought to be included by way of an amendment are or any other property is, also the property of the Partnership firm which is the subject matter of the suit regarding which Preliminary decree for dissolution and rendition of the accounts has been passed.”

6. Again in CRP No.4201 of 2015 which was filed by the respondents 1 to 4 herein this Court had observed as follows:

“As the defendants have not rendered accounts so far, and since the accounts have not been settled for several decades, the plaintiff cannot be prevented from producing the

above said documents in his attempt to prove that the acquisitions made therein were made out of the Partnership funds. This Court does not find any defect or infirmity in the order passed by the trial Court.”

7. The above observations of this Court would clearly indicate that it is always the case of the petitioner that certain other properties have also been acquired by the Partnership firm or by the respondents herein out of the income from the Partnership firm and those properties must also be brought in to fold of the final decree application itself and the said right has been reserved to the petitioner herein in the above Civil Revision petitions.

8. Therefore, this Court conscious of the preliminary decree, had held that it is open to the petitioner herein to let in evidence to show that some other property was also acquired with the funds of the Partnership firm. If such a liberty is reserved, I do not see as to how the trial Court can restrict the evidence to be let in to the period between 1973 and 1978 namely the date of the suit. The respondents are not aggrieved by the liberty

given to the petitioner to examine the witnesses. They have not challenged the order passed by the trial Court allowing examination of the two witnesses. But the petitioner is aggrieved by the restriction imposed.

9. For the foregoing reasons, I find that the restrictions imposed are unjust and the said portion of the order is liable to be set aside. The Civil Revision petitions are allowed. The restriction imposed by the trial Court regarding the period during which the evidence can be let in are removed and it is open to the petitioner to let in evidence. It is made clear that the mere liberty given for let in evidence, will not prevent the trial Court from deciding on the reliability or admissibility of such evidence. No costs. Consequently, connected miscellaneous petition is closed.

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28.10.2020

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Index: Yes/No

Speaking order / Non speaking order

To

The Principal Sub Judge, Puducherry

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R.SUBRAMANIAN, J.

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