



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P.(MD) No. 329 of 2017 (NPD)

and C.M.P.(MD) No. 1653 of 2017

Salma Beevi

...Petitioner/Respondent/Petitioner/
Plaintiff

Vs.

1. Maria Ayisa
2. Kamitha Beevi
3. Arumugam

...Respondents/Petitioners/Respondents1,2,7/
Defendant Nos-1,2,7

PRAYER : Petition filed under Section 115 of Civil Procedure Code, to allow the Civil Revision Petition and set aside the Fair and Decreeal Order, dated 25.01.2017 made in I.A. No. 679 of 2016 in I.A. No. 202 of 2016 in O.S. No.30 of 2014 on the file of the District Munsif Court, Mudukulathur.

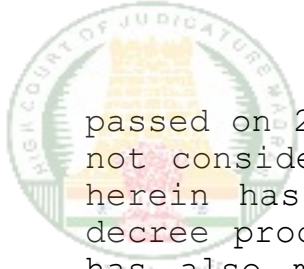
For Petitioner : M/s.M.D. Devi Saravana Priya
For Respondent : Mr..K.Kumaravel
RR1 to RR3

ORDER

This petition has been filed to allow the Civil Revision Petition and set aside the Fair and Decreeal Order, dated 25.01.2017 made in I.A. No. 679 of 2016 in I.A. No. 202 of 2016 in O.S. No.30 of 2014 on the file of the District Munsif Court, Mudukulathur.

2. The revision petitioner herein has filed a suit in O.S.No. 30 of 2014 on the file of the District Munsif Court, Mudukulathur, and the same was dismissed for default and exparte order was passed on 26.08.2015 against the respondents. Based on the Ex-parte Decree, dated 26.08.2015, the revision petitioner has filed a petition in I.A. No.202 of 2016 in O.S. No. 30 of 2014 for 'Meats and bounds' in which Advocate Commissioner has also appointed. The respondents herein have filed a petition I.A. No. 679 of 2016 in I.A. No.202 of 2016 in O.S. No. 30 of 2014 to set aside the exparte order and the same allowed on 25.01.2017 and a conditional order was passed. The learned Counsel further contended that the respondents have failed to comply with conditional order, dated 25.01.2017 and hence, the petition was automatically dismissed. Against the same, the Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioner submitted that the Court below erred in setting aside the ex-parte order on the ground that an opportunity to be given to the respondents to divide the property by Meats and bounds, particularly when the respondents has not challenged the preliminary decree



passed on 26.08.2015. He further submitted that the Court below has not considered that based on the preliminary decree, the petitioner herein has filed petition for Final decree and in the said Final decree proceedings, Advocate Commissioner has been appointed and he has also measured the property and determined the shares of the parties, thereafter, only the respondents herein have filed a petition to set aside the ex-parte order is only to prolong the matter. He further submitted that the Court below without any reason erred in finding that an opportunity has to be given to the petitioner to put forth the case in the final decree proceedings is not sustainable in law, particularly when the petitioner has not taken any steps to set aside the ex-parte preliminary decree passed on 26.08.2015.

4. The learned counsel appearing for the respondents herein submitted that the respondent Nos.1, 2, 7 in I.A. No. 202 of 2016 are the Defendant Nos.1, 2, & 7 in the suit. They have filed I.A. No. 679 of 2016 to set aside the exparte order in I.A. No. 202 of 2016 which was filed for 'Meats and bounds'. He further submitted that the petition in I.A. No. 679 of 2016 was allowed and conditional order was passed. The learned Counsel further submitted that the respondents herein have failed to comply with the aforesaid order, dated 25.01.2017 and hence, the petition was automatically dismissed.

5. On perusal of records, the respondents/petitioners did not file any petition to set aside the preliminary decree instead of filed a petition to set side the exparte order passed in Final decree petition. The Final decree petition is still pending. Hence, it is necessary to give an opportunity to the respondents to contest the Final decree. Therefore, the learned District Munsif, Mudukulathur, has rightly allowed the petition in I.A. No. 679 of 2016 in I.A. No. 202 of 2016 in O.S. No.30 of 2014 with costs. No prejudice will be caused to the revision petitioner herein, if allowing the petition. Therefore, this Court finds no sufficient reason to interfere with the findings of the order, dated 25.01.2017 in I.A. No. 679 of 2016 in I.A. No. 202 of 2016 in O.S. No.30 of 2014 passed by the learned District Munsif, Mudukulathur.

6. In fine, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is also closed.

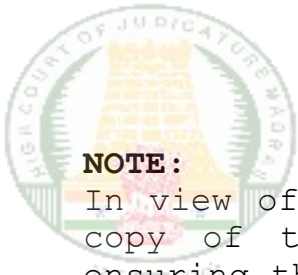
Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

**NOTE:**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The District Munsif Court, Mudukulathur.

2. The Section Officer, (2Copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.Kumaravel, Advocate SR.No.26433

+1 CC to M/s.MD.Devi Saravana priya, Advocate SR.No.26938

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SS (CO)

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