

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.1328 of 2015
and M.P.No.1 of 2015

Rajalingam

...Petitioner

Vs

1.Murugammal
2.Palaniammal
Perianna (Died)
3.Macheriammal
4.Chinnasami
5.Radhakrishnan
6.Krishnan
7.Dhanabagiam
8.Shakunthala
9.Krishnaveni
10.Dhasarathan

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and decretal order dated 20.10.2014 in I.A.No.550 of 2014 in I.A.No.323 of 2007 in O.S.No.215 of 1977 on the file of the District Munsif Court, Dharmapuri.

For Petitioner : Mr.Bharath Gowtham for
Ms.P.Veena
For Respondents : Mr.Elizabeth Ravi

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 20.10.2014 in I.A.No.550 of 2014 in I.A.No.323 of 2007 in O.S.No.215 of 1977 on the file of the District Munsif Court, Dharmapuri, thereby dismissed the petition filed by the petitioner to implead himself as a party to the final decree proceedings.

2.The 2nd respondent filed the suit for partition as against the 1st respondent and his demised brother. The preliminary decree was passed in the said suit and aggrieved by the same, the 2nd defendant in the suit filed an Appeal Suit in A.S.No.44 of 1989. In the Appeal Suit, the preliminary decree was modified in respect of the 1st item of the suit schedule property alone. Accordingly, the 2nd respondent herein is entitled for half share in both the item Nos.1 and 2 of the schedule property. In respect of the 1st item of the suit schedule property half share was allotted to the plaintiff, remaining half share was allotted to both the defendants in the said suit. Thereafter, the 2nd respondent herein filed a petition in I.A.No.323 of 2007. While pending the said application, the petitioner is being the grand son of the 2nd demised defendant, filed a petition to implead himself as a party to

the final decree proceedings on the ground that there was muchalika entered into between the family members.

3. Accordingly, he has got separate share in the suit schedule property. In fact after the demise of the 2nd defendant, viz., Perianna, his legal heir was already impleaded as party to the final decree application. Likewise, the petitioner's father-Chinnasami, already impleaded as a party to the final decree proceedings. As rightly held by the court below, final decree cannot be passed on the preliminary decree. Any separate claim made by the petitioner, can be agitated in the manner known to law. Therefore, this Court finds no infirmity or irregularity in the order passed by the Court below in I.A.No.550 of 2014 in I.A.No.323 of 2007 in O.S.No.215 of 1977 on the file of the District Munsif Court, Dharmapuri, dated 20.10.2014.

4. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

02.02.2021

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C.R.P.(P.D).No.1328 of 2015

G.K.ILANTHIRAIYAN.J,

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To
The District Munsif, Dharmapuri.



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