

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.1056 of 2020
and
C.M.P.No.5771 of 2020

Tidier Delphin

... Petitioner/8th Respondent

Vs

Victor Kashmir (died) rep. By his
Legal Representatives

1.Lawrence Kashmir

3.Francisca Kashmir

4.Leonie Delphin

2.Angeline Kashmir

5.Josephine Turgot

6.Rene Delphin

7.Fernand Delphin

8.Theodore Delphin

9.Emmanuel Delphin

10.Malarvidjy Delphin

11.Edvige Delphin

12.Virginia Delphin

13.Jean Marie Delphin

14.George Delphin

15.Chila Delphin

16.Thony Babu Delphin

17.Anitha Delphin

18.Gregorie Delophon

19.Marie Delphin

20.Simon Delphin

21.Christain Kashmir

... Respondents 1 to 3/Decree Holders

22.Sambsivam
 23.Gowtham
 24.Dessindra Turgot
 25.Joselina Turgot
 26.Radja Turgot
 27.Bernard Turgot
 28.Nalina Turgot
 29.Gracia Turgot
 30.Bernadette Mala
 31.Vennial Turgot
 32.Aroumaya Tousseau Turgot
 33.Senthia Turgot
 34.Pradip Vidjay Turgot

... Respondents/Respondents

(Respondents 22 to 34 Given up in the
 CRP)

Civil Revision Petition filed under Article 115 of the Constitution of India, to set aside the order dated 25.02.2020 allowing the E.P.No.7 of 2004 in O.S.No.329 of 1985 on the file of the Principal Sub Judge at Puducherry.

For Petitioner . Mr.L.Chandrakumar

For Respondents ... Mr.Sridharan

ORDER

This revision petition has filed by the 8th plaintiff in O.S.No.329 of 1985, which had been filed before the Principal Subordinate Court, Puducherry. The said suit in O.S.No.329 of 1985 and another suit, namely, O.S.No.359 of 1982 were tried together. In O.S.No.359 of 1982, the first defendant was the 1st plaintiff in O.S.No.329 of 1985. The said

plaintiff/first defendant in O.S.No.329 of 1985 had expired and his legal representatives are still agitating the issues. O.S.No.359 of 1982 was dismissed in view of the decree passed in O.S.No.329 of 1985. Subsequent to the preliminary decree passed, an application was filed for final decree and a Commissioner was appointed and properties were also subdivided. Thereafter, the only work which remained was to allot the respective parties to whom the decree had been granted. An objection has been raised by the learned counsel for the petitioners that the decree holders are entitled only for undivided $3/8^{\text{th}}$ share in the property. Unfortunately, it is claimed in the execution petition, they have been granted $5/8^{\text{th}}$ share. This has led to filing of the present revision petition.

2. In view of the fact that there were two suits and a preliminary decree had been passed, it would only be appropriate that the learned Principal Sub Judge reapplies his/her mind, to examine the actual share allotted to each one of the parties in the preliminary decree and affirmed in the final decree. In the order under revision, which is dated 25.02.2020, the learned Principal Sub Judge, had made an observation that

“a careful consideration of the decree passed in O.S.No.329/1985 shows that this court has allotted 5 shares to the 1st defendant Victor Kashmir. Based on the decree in O.S.No.329/1985 allotting 5/8 share to the decree holder Victor Kashmir, the said Victor Kashmir filed I.A.No.1970/1997 for passing a final decree in which the Advocate Commissioner was appointed and this Court was passed a final decree on 30.06.2003 after contest allotting 5/8 share to the decree holder Victor Kashmir shown as CDEF in the Advocate Commissioner report.”

3. This observation of the learned Judge that the first defendant was entitled to undivided 5/8th share is now being contested by the learned counsel for the respondent/revision petitioner who states that only 3/8th share alone was actually granted. There seems to be some difference, which of course has to be verified by the court below comparing with the judgment passed and the preliminary decree

granted, and also on the preliminary decree as framed and as drafted. This is an exercise which has to be undertaken only by the trial Court to the satisfaction of both the parties. I shall therefore place a request on the learned Principal Sub Judge, Puducherry, to re-examine the entire issue. It is contended by the learned counsel for the respondents that the suit has been filed in the year 1985 and a generation has passed who were not parties. It is necessary to determine the actual shares which has been allotted to each one of them. Therefore, the revision petition is disposed of with the following directions:

(i) The Principal Sub Judge, Puducherry, may revive E.P.No.7 of 2004 and thereafter, examine the actual shares which had been allotted to the decree holders and pass a considered order answering whether the share granted is $3/8^{\text{th}}$ or $5/8^{\text{th}}$ without any ambiguity.

(ii) The matter is remanded to the Principal Sub Court, Puducherry, to re-examine and give a further finding with respect to the shares allotted to the decree holders in E.P.No.7 of 2004 in O.S.No.329 of 1985.

4. The Civil Revision Petition is disposed of. It is only to appropriate that the Principal Sub Court, Puducherry, applies its mind and gives a finality and passes final orders on or before 31.12.2021. Consequently, connected miscellaneous petition is closed. No order as to costs.

Internet: Yes/No
Index: Yes/No
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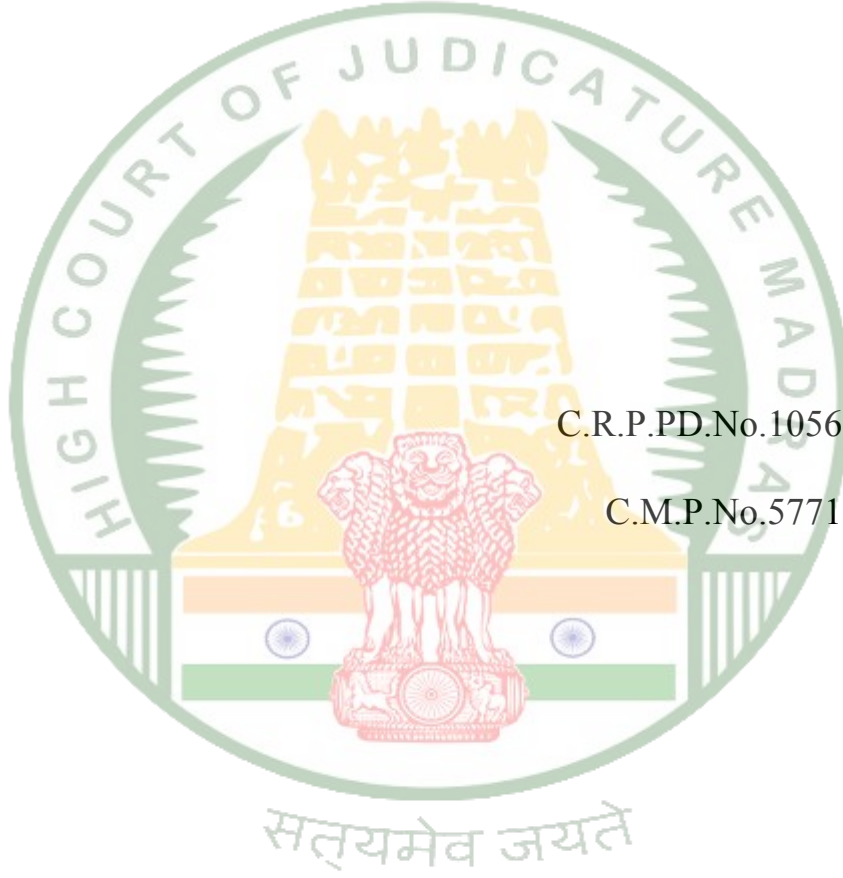
To
The Principal Sub Court,
Puducherry.



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C.V.KARTHIKEYAN,J.

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