

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

Coram

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

C.R.P.(PD) No.989 of 2021
and
C.M.P.Nos.7923 & 7928 of 2021

K.Savithri

.. Petitioner/Petitioner/Plaintiff

Vs

1.Sathyavathi Padmasenan
2.K.Sadanandan
3.K.Sachidanandan

.. Respondents/Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.01.2021 passed in I.A.No.1 of 2019 in O.S.No.3984 of 2014 on the file of the XVI Additional City Civil Court, Chennai and allow the I.A.No.1 of 2019 and thereby pass an order of Preliminary decree as prayed for in the suit on the basis of the admission made by the 2nd respondent.

For Petitioner

..

Mr.P.V.Balasubramaniam

For Respondent

..

No appearance

ORDER

This revision petition has been filed by the plaintiff in O.S.No.3984 of 2014 which is now pending on the file of the XVI Additional City Civil Court, Chennai. The plaintiff had filed an application under Order XII Rule 6(1) of CPC calling upon the Court to pass a Judgment and Decree allotting 1/4th share in the schedule to the plaintiff based on an admission by DW-1 during cross-examination on 13.09.2019. The said application was taken on file as I.A.No.1 of 2019 and orders were passed on 22.01.2021 which is the subject matter of the present Revision Petition.

2.The suit in O.S.No.3984 of 2014 had been instituted by the plaintiff K.Savithri against her sister and two brothers seeking division into four shares of the property mentioned in the schedule which is situated in Ayanavaram, Chennai.

3.It is claimed that there are only four sharers to the suit property.

There is also a Will which had been executed by the father by which also the parties to the suit will get 1/4th share in the suit property. The said Will had been registered as Document No.11 of 1995 dated 27.01.1995.

The said Will is neither probated nor decision obtained as on date and it is informed by Mr.P.V.Balasubramaniam, learned counsel for the revision petitioner that such proceedings have been initiated.

4.However, the suit proceeded. In the said suit an application in I.A.No.7 of 2015 came to be filed by the 2nd defendant in the suit. The relief sought in the said application which had been filed under Order VII Rule 11 of CPC was to reject the plaint taking advantage of sub clause (a) (b) and (d) of Order VII Rule 11 of CPC. The parties had joined issue with the said application and an order was passed on 21.03.2017, dismissing the said application.

5.Thereafter, the matter also came up before this Court in C.R.P.No.1375 of 2017 and this Court had actually disposed of the Civil Revision Petition, but in effect had affirmed the dismissal of the said application, and had observed that the Trial Court shall take up the issue of valuation of the suit as a preliminary issue and decide the same within a period of three months.

6.The Trial Court then took up that task assigned to it. In the course of deciding such an issue, witnesses were examined in chief and also cross-examined. The 2nd defendant K.Sadanandan, who was examined as DW-1 in the said proceedings, had, according to the present petitioner / plaintiff admitted during cross-examination that each one of the parties are entitled for 1/4th undivided share in the suit schedule property. He had also admitted that the plaintiff is also entitled for 1/4th undivided share in the suit property.

7.I really hope that cross-examination had ended, at that particular point of time. For reasons best known, cross-examination continued. That particular admission was put promptly as a suggestion and a denial was issued claiming that the plaintiff was not entitled to 1/4th share and any suggestion to that extent are **not correct** and denied.

8.The learned Judge had two separate sets of statements by witness under oath. In the first portion, he had admitted that the revision petitioner/plaintiff was entitled for 1/4th share in the suit schedule property. Later in the course of the cross-examination, the witness had denied such suggestion that the plaintiff would be entitled for 1/4th share in the suit schedule property.

9.However, taking advantage of the admission, the petitioner herein filed I.A.No.1 of 2019 calling upon the Court to pass a Judgment and Decree under Order XII Rule 6(1) of CPC. The learned Judge refused to accept such a course holding as aforesaid, that two statements were made and therefore stated that the party should go through the process of trial and then only claim the allotted share in the property.

10.In view of that fact it is correct that there are two following statements. I find no error in the order of the learned Judge. However, it is stated by Mr.P.V.Balasubramaniam, learned counsel for the revision petitioner, that the petitioner / plaintiff is advanced in age and that factor is taken advantage by his siblings.

11.I hope that the statement that advanced age is taken advantage is not correct. Anyway since such a statement is made, let the Trial Court Judge go through the process of trial. If at all there is confluence of mind in the thought process regarding appointment of a mediator to examine the issue, the learned Judge may take up such offer and relegate the parties to mediation.

12.I am confident that the plaintiff and the defendants would accept for mediation. It is a voluntary process. It is a process where parties themselves come to an understanding with respect to the nature of

resolution to be taken forward and with respect to the issues raised. The mediator only can assist them in that process.

13. During the course of either deciding the jurisdiction of the Court as directed by this Court in the earlier Civil Revision Petition or during the course of trial, if wisdom hopefully dawns on the parties in their interest to settle the issues and it is not to their advantage to further litigate. I am confident that the learned Judge would take such a suggestion and advise the parties to resolve their disputes through mediation. The learned Judge shall follow the directions given in the earlier Civil Revision Petition in C.R.P.No.1375 of 2017 by order dated 14.08.2018, wherein, a direction was given to take up the issue of valuation of the suit as a preliminary issue was also given.

14. With the said observations, the Civil Revision Petition is dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

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Internet: Yes/No

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To:- The XVI Additional City Civil Court, Chennai.

C.V.KARTHIKEYAN,J.

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