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C.R.P.(NPD)No.3021 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3021 of 2016
and C.M.P.No.15288 of 2016

Thulasi Ammal (died)

1.Mani @ Ravi

2.Veera Ammal @ Praveena

3.Manjula

.. Petitioners

Vs.

Muniyammal (died)

Chinna Pappammal (died)

Kamatchi Ammal (died)

1.Chinnaponnu

2.Subramani

3.Sundari @ Chinnamma

4.Munisami

5.Moorthy

6.Unnamalai Ammal

7.Sundari

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the docket order dated 29.02.2016 made in



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I.A.No.518 of 2013 in O.S.No.639 of 1993 on the file of the District and Sessions Court, Vellore.

For Petitioners : Mr.A.Gouthaman

For R2 to R7 : No appearance

ORDER

Civil Revision Petition is filed against the docket order dated 29.02.2016 made in I.A.No.518 of 2013 in O.S.No.639 of 1993 on the file of the District and Sessions Court, Vellore.

2.The petitioners are applicants in I.A.No.518 of 2013 in O.S.No.639 of 1993 on the file of the District and Sessions Court, Vellore, filed for passing final decree. The plaintiff Thulasi Ammal filed said suit O.S.No.639 of 1993 for partition against her two sisters Muniyammal and Chinna Pappammal as defendants 1 and 2 and his brother's wife Kamatchi Ammal as 3rd defendant claiming 1/4th share in the suit property. A preliminary decree was passed on 31.03.1999 granting 1/4th share to the plaintiff. After the death of plaintiff Thulasi



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Ammal, the petitioners herein, who are son and daughters of Thulasi Ammal filed I.A.No.518 of 2013 to restore the suit O.S.No.639 of 1993 for appointment of Advocate Commissioner to suggest mode of division as per the preliminary decree for passing final decree in O.S.No.639 of 1993 and allot the deceased plaintiff's share to the petitioners. While the said application was pending, the petitioners filed I.A.No.1326 of 2013 under Order VI Rule 17 of C.P.C. to permit the petitioners to amend I.A.No.518 of 2013 in O.S.No.639 of 1993 stating that 3rd defendant Kamatchi Ammal died and her husband Chinnappa Gounder also died without any issues. Hence, the share allotted in the preliminary decree to the plaintiff and defendants to be modified as 1/3rd share each instead of 1/4th share.

3.The respondents 4 to 7, who are legal heirs of 2nd defendant filed counter affidavit and opposed the said application on the ground that husband of 3rd defendant, who is brother of plaintiff and defendants 1 and 2, conveyed his share to the 2nd defendant by sale deed dated 22.01.1979.



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Therefore, the share allotted to 3rd defendant will devolve on the respondents 4 to 7, who are legal heirs of the 2nd defendant.

4.The learned Judge by order dated 25.06.2014 allowed I.A.No.1326 of 2013.

5.The respondents 4 to 7 filed memo dated 01.07.2015 in I.A.No.518 of 2013 for permission to let in oral and documentary evidence to prove subsequent event by which the plaintiff Thulasi Ammal executed a family arrangement dated 01.06.2000 foregoing her share in favour of her sister Chinna Pappammal, 2nd defendant in O.S.No.639 of 1993. In view of said family arrangement, the plaintiff Thulasi Ammal did not file any application for final decree till her lifetime. The petitioners, after death of Thulasi Ammal and after 15 years of passing preliminary decree, have filed application in I.A.No.518 of 2013 for passing final decree.



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6.The learned Judge by the order dated 29.02.2016 made in I.A.No.518 of 2013 permitted the respondents 4 to 7 to let in oral and documentary evidence and directed the respondents 4 to 7 to pay stamp duty penalty.

7.Against the said docket order dated 29.02.2016 made in I.A.No.518 of 2013 in O.S.No.639 of 1993, the petitioners have come out with the present Civil Revision Petition.

8.The learned counsel appearing for the petitioners contended that the learned Judge erred in allowing respondents 4 to 7 to let in oral and documentary evidence based on the unregistered family arrangement. The respondents 4 to 7 for the first time have mentioned about family arrangement in the memo filed by them. Final decree application was filed in the year 2013. The respondents 4 to 7 have not mentioned the family arrangement in the counter affidavit filed in the final decree application. The learned counsel further contended that the petitioners



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filed I.A.No.1327 of 2013 in I.A.No.518 of 2013 to amend the final decree application claiming 1/3rd share in the suit property on the ground that 3rd defendant died without issues and her husband predeceased her. In the said application also, the respondents 4 to 7 have not stated about the alleged family arrangement executed by plaintiff, mother of the petitioners. The alleged family arrangement is cooked up and unregistered document. It has no valid and binding force and hence, the same cannot be marked. The petitioners have filed application for production of alleged family settlement for raising their objection, when the respondents 4 to 7 have produced original document, the learned Judge without giving opportunity to verify the document, closed the said memo and prayed for allowing the Civil Revision Petition.

9. Though notice has been served on the respondents 2 to 7 and their names are printed in the cause list, there is no representation for them either in person or through counsel.



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10. Heard the learned counsel appearing for the petitioners and perused the entire materials on record.

11. From the materials on record, it is seen that mother of the petitioners filed O.S.No.639 of 1993 for partition of property and allotment of 1/4th share against her two sisters and brother's wife. A preliminary decree was passed on 31.03.1999. The plaintiff did not file any application for final decree during her lifetime. After her death only, the petitioners, who are the son and daughters of plaintiff filed application in I.A.No.518 of 2013 for final decree in the year 2013, after 15 years of passing preliminary decree. The petitioners have not stated date of death of plaintiff. When the final decree application was pending, the petitioners filed I.A.No.1327 of 2013 in I.A.No.518 of 2013 for amendment of final decree application claiming 1/3rd share in the suit property on the ground that 3rd defendant died issue less, her husband predeceased her and hence, the petitioners are entitled to share of 3rd defendant. Even though the respondents 4 to 7 filed a memo dated



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01.07.2015 seeking permission to let in oral and documentary evidence in the final decree application on the ground that the petitioners' mother by family arrangement released her share in favour of her sister 2nd defendant Chinna Pappammal and therefore, she gave up her right in the suit property and did not file any application for passing final decree, the learned Judge adjourned the said memo on several occasions for objections if any, by the petitioners. No objection was filed. The learned Judge, on 29.02.2016 after eight months of filing memo and after giving opportunity to the petitioners to file objections, permitted the respondents 4 to 7 to let in oral and documentary evidence and directed them to pay stamp duty penalty.

12. According to the petitioners, the family arrangement is compulsorily registrable, therefore, it cannot be marked and the learned Judge erred in permitting the respondents 4 to 7 to pay stamp duty penalty and mark the document. Whether the document can be marked or not can be considered only at the time, when the document is produced



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for marking. That stage has not reached. In the present case, the learned Judge considered that as per preliminary decree, the petitioners' mother is entitled to 1/4th share, the petitioners are now claiming 1/3rd share on the death of 3rd defendant and are claiming share in the share of 3rd defendant also. Further the respondents 4 to 7 are claiming that petitioners' mother relinquished her right in the suit property and therefore, the petitioners are not entitled to any share in the suit property. The issue whether the petitioners are entitled to 1/4th share as per preliminary decree or 1/3rd share on the death of 3rd defendant or petitioners have no share in the suit property as claimed by respondents 4 to 7 can be decided only after considering oral and documentary evidence to be let in by the parties. When there is a dispute, the learned Judge permitted the respondents 4 to 7 to let in oral and documentary evidence. In view of the rival contentions, the learned Judge has rightly permitted the respondents 4 to 7 to let in oral and documentary evidence, which will avoid multiplicity of proceedings. There is no error in the said order of the learned Judge warranting interference by this Court.



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13.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
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To

The District and Sessions Judge
Vellore.



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V.M.VELUMANI,J.

Kj

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