

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P(NPD).No.2163 of 2021

and C.M.P.No.16397 of 2021

Settu

... Petitioner

Vs.

- 1.Elumalai
Chinnaponnu (Died)
Thangavel (Died)
- 2.Pandian
Narayanasamy (Died)
- 3.Ammakannu

(Cause title accepted vide Court order dated
22.09.2021,made in C.M.P.No.15459 of 2021
in C.R.P.SR.No.70190 of 2021 GCSJ)

... Respondents

Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order passed in I.A.No.943 of 2017 in O.S.No.99 of 1998 on the file of the learned Principal District Munsif Court, Ulundurpet dated 15.10.2020.

For Petitioner : Mr. R.Baskar

O R D E R

This petition is filed challenging the order dated 15.10.2020 passed in I.A.No.943 of 2017 in O.S.No.99 of 1998, on the file of the learned Principal District Munsif Court, Ulundurpet.

2.The learned counsel for the petitioner submitted that the first respondent filed a suit for partition, claiming 1/3rd share in Item.Nos.1 to 10 of the suit properties. The suit was contested and it was decreed on 29.10.2004, negating the claim of the 1st respondent for partition in Item Nos.5 to 10 of the suit properties and passing the decree for partition of 1/3rd share of Item Nos.1 to 4 of the suit properties. Subsequently, the first respondent filed I.A.No.943 of 2017, under Order 26 Rule 13(a) of Civil Procedure Code for passing a final decree. The learned counsel for the petitioner also submitted that the suit was decreed on 29.10.2004 and the final decree petition was filed only on 31.08.2017. In the final decree petition, the first respondent has shown all the 10 items of the suit properties as properties, which is not correct. When the preliminary decree was only in respect of Item Nos.1 to 4 of suit properties, filing final decree petition for all the 10 items of suit properties is obviously not

correct and appointment of Advocate Commissioner for suggesting mode of division for all the ten properties is also not correct.

3. Admittedly, the suit for partition was filed by the first respondent for Item Nos.1 to 10 of the suit properties. After contest, the suit was decreed only for Item Nos.1 to 4 of the suit properties. Final decree can be passed only in pursuance of preliminary decree. When the preliminary decree is only for Item Nos.1 to 4 of the suit properties, filing of final decree petition for Item Nos.1 to 10 of the suit properties is not correct. Therefore, final decree petition filed for Item Nos. 5 to 10 suit properties cannot be permitted.

4. It is also contented by the learned counsel for the petitioner that after preliminary decree was passed, the petitioner purchased Item No.1 to 3 of the suit properties through Court proceedings. Since the purchase alleged by the petitioner had taken place after the preliminary decree, it is a subject matter for enquiry in the final decree petition. Therefore, the order appointing the Advocate Commissioner for suggesting the mode of decision by the learned trial judge is restricted only to Item Nos.1 to 4 of the suit properties. Accordingly,

G.CHANDRASEKHARAN,J.

vsn

the order of the learned trial judge is modified. This Civil Revision petition stands disposed of as indicated above. No costs. Consequently, connected miscellaneous petition is also closed.

04.10.2021

Index: Yes / No
Speaking order / Non speaking order
vsn

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