

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.1872 of 2021

1.M.Renugadevi
2.N.Devagi
3.S.Krishnaveni
4.S.Gnanavadivambal

Petitioners /
Plaintiffs

versus

1.K.A.Parameshwaran
2.K.A.Upathesikan
3.K.A.Ramachandran

Respondents /
Defendants

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, to set aside the fair and final order dated 06.03.2021 passed by the III Additional District Court, Salem in I.A.No.293 of 2020 in O.S.No.267 of 2017.

For Petitioners : Mr.L.Mouli

ORDER

This Civil Revision Petition is filed against the order dated 06.03.2021 passed by the learned III Additional District Judge, Salem, in I.A.No.293 of 2020 in O.S.No.267 of 2017.

2. I.A.No 293 of 2020 was filed by the petitioners claiming that, they filed the suit for partition and permanent injunction. The suit was decreed on 21.06.2018. The petitioners \ plaintiffs are entitled to 4/7 share in the suit properties but in the judgment and decree, it was mentioned that, they are entitled to only 1/8 share in the suit properties. Therefore, this petition was filed for amending the judgment and decree, with regard to the quantum of share allotted to the petitioners.

3. The learned counsel for the petitioners submitted that, this petition was dismissed by the learned III Additional District Judge, stating that, only arithmetical and clerical errors can be corrected under Section 152 C.P.C. The mistakes found in the judgment and decree, are not clerical or arithmetical mistakes and therefore, the amendment sought for,

cannot be allowed. In such view of the matter, this petition was dismissed. Against the said order, this Civil Revision Petition is preferred.

4. The learned counsel for the petitioners submitted that, as per the plaint, the petitioners \ plaintiffs prays for division of properties into 7 equal shares and allotment of 4 such shares to the plaintiffs and for other reliefs. When there is specific claim for partition and allotment of 4/7 share, the judgment allotted 1/8 share to the petitioners / plaintiffs, is obviously not correct and it needs to be corrected.

5. Considered the submissions of the learned counsel for the petitioners and perused the records.

6. Reading of the plaint shows that, the petitioners and defendants are children of one S.K.Appavu Pillai and A.Angammal. The suit properties belonged to their parents and they died intestate leaving the petitioners and respondents, as their legal representatives. It is further seen in para 5 of the plaint that, the plaintiffs and defendants are each entitled to

1/8 share. In para 8, it is said that, the plaintiffs and defendants, are each entitled to 1/7 share. In the prayer, they claimed that, the plaintiffs are entitled to 4/7 share. It appears that, the defendants have not contested the suit and an *ex parte* decree was passed on 21.06.2018.

7. P.W.1 was examined, Ex.P.1 to Ex.P.5 had been marked. On considering the evidence of P.W.1 and the materials placed, the learned trial Judge, though found that, the petitioners / respondents are entitled to equal shares in the suit properties, instead of passing a judgment for 4/7 share to the petitioners / plaintiffs allotted only 1/8 share to them. This is an error apparent on the face of the record and needs to be corrected. It falls fairly within the scope of clerical and arithmetic mistakes covered under Section 152 of C.P.C.

8. Despite the petition in I.A.No.293 of 2020 was filed under Section 152 C.P.C., the learned trial Judge, without considering the merits of the petitioners claim and need to suitably amend the judgment and decree, has wrongly dismissed the petition. Therefore, the order dated

06.03.2021 passed in I.A.No.293 of 2020 has to be necessarily set aside and accordingly, set aside. The learned III Additional District Judge, Salem, is directed to issue notice to the respondents once again and after hearing both the parties, pass appropriate orders, with regard to the allotment of shares, as prayed in the plaint.

9. Accordingly, this Civil Revision Petition is allowed.

However, there is no order as to costs.

13.09.2021

Speaking order / Non-speaking order

Index : Yes / No

psa/sri

To

The III Additional District Court,
Salem.

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G.CHANDRASEKHARAN, J.

psa / sri



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