



C.R.P.(NPD).No.2813 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.2813 of 2021

1.Chandramohan

2.Thilagavathy

.. Petitioners

Vs.

Rangammal (Died)

Saraswathi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow the Civil Revision Petition and direct to take on file of the I.A. filing number R/R256/2021 in O.S.No.385 of 2010 on the file of the District Munisf Court, Gobichettipalayam without asking for maintainability which was returned on 22.10.2021.

For Petitioners : Mr.S.P.Yuaraj

ORDER



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Challenge in this Revision is to the order of the learned District Munsif, Gopichettipalayam, returning the petition filed by the petitioners seeking a final decree in O.S.No.385 of 2010.

2. The suit in O.S.No.385 of 2010 was instituted by one Rangammal seeking partition and separate possession of her 7/9th share in the suit property. The defendants, who are the petitioners herein, resisted the suit contending that the said Rangammal is not entitled to 7/9th share. The suit came to be decreed declaring 1/2 share of Rangammal and a preliminary decree came to be passed. The defendants did not pay the Court fee and seek a declaration of their rights. After the decree, the defendants have come up with this application seeking passing of a final decree.

3. The trial Court returned the application questioning its maintainability, on the ground that there is no preliminary decree in favour of the defendants and a final decree application at their instance will not lie. The same was re-presented stating that the judgment declares the right of the defendants and therefore, they can pay Court fee and seek a final decree.



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The learned District Munsif was not convinced with the explanation offered and returned the application again stating that the preliminary decree does not allot any share to the defendants and hence, they will have to seek a supplementary preliminary decree before seeking a final decree.

4. Mr.S.P.Yuaraj, learned counsel appearing for the petitioners would contend that the defendants have paid the Court fee and therefore there is no bar for the Court to pass a final decree.

5. I am unable to agree with the submission of the counsel. In a partition suit, it is open to the defendants to seek a preliminary decree by paying Court fee either at the time of trial or subsequently. Unless there is a preliminary decree declaring their share, the defendants cannot seek a final decree. Their right to seek a supplementary preliminary decree is not taken away. But, at the same time, they cannot proceed further without obtaining the supplementary preliminary decree.



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R.SUBRAMANIAN, J.

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6. Hence, I do not see any merits in this Revision, the Revision therefore fails and it is accordingly **dismissed**. No costs. It is open to the petitioners to seek supplementary preliminary decree and thereafter file an application for passing of final decree.

17.12.2021

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Index : Yes/ No

Internet :Yes/ No

Speaking order / Non-Speaking order

To

The District Munisf, Gobichettipalayam.

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