

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP.PD.No.2763 of 2003 and

CMP.No.20878 of 2003

1.Marammal  
2.Amsaveni

..Petitioners

Vs.

1.Rajeswari  
2.Muthukumar  
Rukmani (died)  
3.M.Ravindran  
4.M.Jayaram  
5.M.Vijayakumar

..Respondents

(cause title accepted vide  
order dated 19.11.2003 made in  
CMP.No.18447 of 2003)  
(Defendants 3,4 & 5 have remained  
exparte in the suit and hence they are  
given up in the above revision petition)

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the preliminary judgment and decree dated 15.7.1994 in OS.No.372 of 1987 on the file of the Subordinate Judge's Court, Coimbatore.

For Petitioners : Mr.Mukunth  
for M/s.Sarvabhauman Assts.

For Respondents  
R1 & 2 : Notice served  
R3 to 5 : Given up

ORDER

This Civil Revision Petition is directed as against the preliminary judgment and decree passed in OS.No.372 of 1987 on the file of the Subordinate Court, Coimbatore dated 15.07.1994.

2. The respondents 1 and 2 are the plaintiffs. They filed suit for partition, in which the petitioners are defendants 1 and 5. Before the trial court, they were set exparte and the preliminary exparte judgment and decree was passed on 15.07.1994. Immediately, the counsel who entered appearance on behalf of the petitioners / defendants 1 and 5 filed petition to set aside the exparte decree within a period of 30 days. Subsequently, it was returned for certain compliance and they returned the papers, which mixed up with other bundles. Therefore, they could not able to re-present the set aside the exparte decree petition in time. They were able to re-present the petition with delay of 2104 days in filing the set aside the exparte decree. The said petition was dismissed by the trial court. Aggrieved by the same, the petitioner preferred Civil Revision Petition before this Court in CRP.NPD.No.1179 of 2002.

3. When the matter was coming for admission, this Court directed the parties to be present for settling the matter since this Court found no merits in the Civil Revision Petition. When the petitioners were ready and willing to settle the matter, the respondents 1 and 2, namely the plaintiffs were not interested to settle the matter and as such they did not appear before this Court. At that juncture, the petitioners withdrew the Civil Revision Petition and the same was dismissed as withdrawn by order dated 01.11.2002.

4. On perusal of the records, the petitioners also failed to file any appeal suit as against the judgment and decree passed in OS.No.372 of 1987. Immediately after dismissal of the Civil Revision Petition, the petitioners preferred this Civil Revision Petition under Article 227 of the Constitution of India challenging the exparte decree passed by the trial court on the ground that the shares allotted by the trial court are not proper. Even after dismissal of the Civil Revision Petition in CRP.NPD.No.1179 of 2002, the petitioners did not take any step to file an appeal suit as against the judgment and decree passed by the trial court. Therefore, only to save the limitation, the petitioners have filed the present Civil Revision Petition. In support of his contention, the learned counsel for the petitioners relied upon the judgment in the case of Annapoorni Vs. Janaki reported in 1995-1- L.W.141, wherein this Court has held as follows:

"9. The facts set out by me earlier would clearly show that the decree in C.S. 170 of 1984 is unsustainable in law. I have referred to the contents of the plaint. There is no averment in the plaint that the plaintiff husband bequeathed the property to the plaintiff by testament or conveyed the property to the plaintiff by any other instrument. The only basis of

the claim of the plaintiff is that she is a Class I heir under the provisions of the Hindu Succession Act. By the same token, the mother of the husband of the plaintiff would equally be a Class I heir. There being no other heir of the deceased, the plaintiff and the defendant would equally be entitled to the property. Strangely, the prayer in the plaint is to the effect that the plaintiff is to be declared entitled to the entire property. Counsel for the plaintiff should have advised the plaintiff to claim only such relief to which she would be entitled, to law. He did not do so. The defendant did not point out in the written statement that the plaintiff would be entitled to only one half share even on the basis of the averments in the plaint, probably, because, the defendant wanted to defeat the claim of the plaintiff in entirety. One plea taken by her is that the plaintiff had lost her status as the wife of the deceased by a divorce according to caste custom. Another plea is that the property was purchased by her with her own funds in the name of her son when he was a minor, and he was not entitled to any interest in the property.

11. When this Court finds that a decree suffers from an error of law apparent on the face of the record owing to non-application of mind of the Court, to the relevant principles of law, this Court cannot keep silent and allow the decree to be in force, particularly, when it causes grave injustice. There can be no doubt whatever that under the Hindu Succession Act, certain persons are designated as Class I heirs and all of them are entitled to succeed to the estate of a deceased Hindu. There is no earthly reason for depriving the mother of the deceased of her legitimate share in the estate which in this case happens to be a moiety. This is a typical case of miscarriage of justice which should be rectified the moment it comes to the notice of this Court. It is only for that reason, I am exercising my powers under Section 115 of the Code of Civil Procedure and Article 227 of the Constitution of India."

On perusal of the said judgment, the petitioner therein preferred the above Civil Revision Petition as against the petition filed under Section 47 of CPC in the execution proceedings. The petitioner after exhausting appeal remedy in the execution proceedings, filed petition under Section 47 of CPC challenging the decree passed by the trial court. Therefore, in the case on hand, straightaway they filed the present Civil Revision Petition under Article 227 of the

Constitution of India without even exhausting the appeal remedy. Therefore, the above judgment relied upon by the learned counsel for the petitioners is not applicable to the case on hand. He further relied upon the judgment in the case of Vineeta Sharma Vs. Rakesh Sharma and others reported in 2020 (5) CTC 302, wherein the Hon'ble Supreme Court of India has held as follows:

1. The question concerning the interpretation of section 6 of the Signature Not Verified Hindu Succession Act, 1956 (in short, 'the Act of 1956') as amended Digitally signed by Narendra Prasad Date: 2020.08.11 14:13:54 IST Reason:

by Hindu Succession (Amendment) Act, 2005 (in short, 'the Act of 2005') has been referred to a larger Bench in view of the conflicting verdicts rendered in two Division Bench judgments of this Court in Prakash & Ors. v. Phulavati & Ors., (2016) 2 SCC 36 and Danamma @ Suman Surpur & Anr. v. Amar & Ors., (2018) 3 SCC 343. In other connected matters, the question involved is similar; as such, they have also been referred for hearing along.

2. In the case of Lokmani & Ors. v. Mahadevamma & Ors., [S.L.P.(C) No.6840 of 2016] the High Court held that section 6, as amended by the Act of 2005, is deemed to be there since 17.6.1956 when the Act of 1956 came into force, the amended provisions are given retrospective effect, when the daughters were denied right in the coparcenary property, pending proceedings are to be decided in the light of the amended provisions. Inequality has been removed. The High Court held that the oral partition and unregistered partition deeds are excluded from the definition of 'partition' used in the Explanation to amended Section 6(5).

9. In Danamma (supra), this Court held that the amended provisions of section 6 confer full rights upon the daughter coparcener. Any coparcener, including a daughter, can claim a partition in the coparcenary property. Gurunalingappa died in the year 2001, leaving behind two daughters, two sons, and a widow. Coparcener's father was not alive when the substituted provision of section 6 came into force. The daughters, sons and the widow were given 1/5th share apiece.

Therefore, the shares allotted to the respondents 1 and 2 can be agitated in the final decree proceedings. Though this Court finds no merits in the present Civil Revision Petition, this Court is inclined to give liberty to the petitioners to agitate

the shares allotted as per the exparte judgment and decree in OS.No.372 of 1987 in the final decree proceedings.

5. With the above observations, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

lok

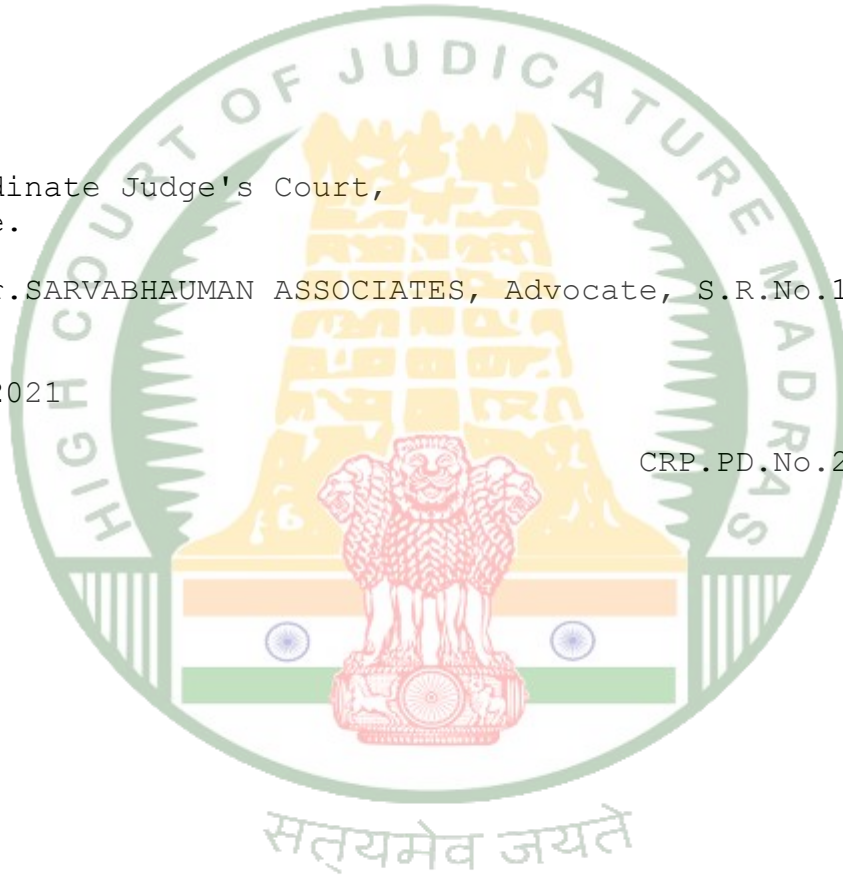
To

The Subordinate Judge's Court,  
Coimbatore.

+1cc to Mr.SARVABHAUMAN ASSOCIATES, Advocate, S.R.No.1438

GMR(CO)  
SM/10/02/2021

CRP.PD.No.2763 of 2003



WEB COPY