



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :30.03.2021

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (MD)No.941 of 2010 (PD)

1.O.S.V.Mohanram (Died)
2.O.V.M.Sivakumar
3.Radha
4.Amutha

...Petitioners

(Petitioners 2 to 4 are brought on record as the LR's of the deceased sole petitioner vide Court order dated 25.02.2020, made in CMP(MD) No.2048 to 2050 of 2020 in CRP(MD) No.941 of 2010 by RSMJ)

Vs.

1.O.V.Krishnaram Babu
2.O.V.Srinivasan (Died)
3.O.V.Thulasiram (Died)
4.O.V.S.Giridhari Prasath
5.O.V.S.Ram
6.O.V.T.Menaka
7.Vijayasree
8.Umamaheswari
9.Murugesh

...Respondents

(R4 and R5 are brought on record as LR's of deceased second respondent vide Court order dated 15.09.2020 made in CMP(MD) No.2051 to 2053 of 2020 in CRP(MD) No.941 of 2010 by MKKSJ)

(R6 to R9 are brought on record as LR's of deceased third respondent vide Court order dated 15.09.2020 made in CMP(MD) No.3863 of 2020 in CRP(MD) No.941 of 2010 by MKKSJ)

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, against the order dated 18.03.2010 passed in I.A.No.791 of 2009 in Ar.O.P.No.76 of 1994, on the file of the Principal Subordinate Judge, Madurai, allowing the petition directing the parties to file memo suggesting three new arbitrators to change the previous award deciding the shares of the parties.



For Petitioners: Mr.K.Samydurai
For R1 : Mr.S.Ramesh
R2 & R3 : Died
R4 to R9 : No appearance

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O R D E R

These proceedings with chequered history relate to the estate of one Varatharajulu, who was in possession vast properties and was blessed with five sons.

2.The dispute relating to the partition of the properties was referred to three arbitrators in the year 1978. The arbitrators passed an award dated 03.08.1978. Of course, there was a dissent by one of the arbitrators. Soon after the award was passed before it could be made a rule of a Court under Section 17 of the Arbitration Act, 1940, one of the sons filed a suit for partition in O.S.No.744 of 1980 on the file of the Additional Sub Court, Madurai, ignoring the award. The trial Court dismissed the suit concluding that one an award has been passed, the remedy of the plaintiff is to seek to make the award rule of Court as contemplated under Section 17 of the Arbitration Act, 1940 and therefore the suit for partition will not lie.

3.Appeals were taken there from in A.S.Nos.702 of 1984 and 487 of 1986, the Division Bench of this Court dismissed the appeals, confirming the decree and judgment of the trial Court made on 29.04.1992. Special Leave Petitions challenging the judgment of the Division Bench were also dismissed by the Honourable Supreme Court on 29.07.1994. The Honourable Supreme Court preserved the right of the plaintiff/appellant to take appropriate proceedings to secure his interest in the property. Therefore, the plaintiff in the suit, who is the fifth son, namely, Krishnaram Babu filed an application, seeking amendment of the award purportedly under Section 15 of the Arbitration Act, 1940. The amendment was sought for on the ground that his father Varatharajulu and one of the sons Jawaharlal had died in the interregnum, and hence the devolution of their sharers in the property must be taken into and the award should be modified accordingly.

4.This was resisted by the respondents, namely the other brothers, contending that there are several alienations made by Jawaharlal and Varadharajulu, including certain testamentary dispositions.

5. The trial Court namely, the Principal Subordinate Court, Madurai allowed the application in I.A.No.791 of 2009, applying general law relating to partition and concluded that the



award will have to be reopened in order to decide the devolution of interest on the death of the father and one of the sons. The learned trial judge without considering the scope of the power under Section 15 of the Arbitration Act, merely made a general statement that subsequent events could be taken note of and the sharers of the parties could be altered as if he is dealing with the application for passing a supplementary preliminary decree in a partition suit. On the above conclusion, the learned Subordinate judge, allowed the application in I.A.No.791 of 2009 and directed the award to be reopened. It is this order which is the subject matter of the CRP (MD) No.791 of 2010.

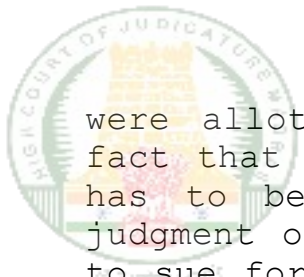
6.I have heard Mr.K.Samidurai, the learned counsel appearing for the petitioner and Mr.S.Ramesh, the learned counsel appearing for the respondent.

7.I am clear in my mind that the learned Subordinate judge had exceeded the jurisdiction conferred on him, under Section 15 of the Arbitration Act, 1940. The award passed by the arbitrators dated 03.08.1978 is like a final decree and it allots specific portions of specific items of properties to the respondents herein. No doubt, it has not been made a rule of a Court as contemplated under Section 17 of the Arbitration Act. There is no application for setting aside the said award also. An application filed by the respondents herein, seeking appointment of new arbitrators in I.A.No.80 of 2007 has also been dismissed by the trial Court. It is in these circumstances, the power of the Court to amend the award under Section 15 of the Arbitration Act 1940, assumes significance. Section 15 of the Arbitration Act 1940, reads as follows:-

15.Power of Court to modify award.- The Court may by order modify or correct an award-

- (a)where it appears that a part of, the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred;or
- (b)where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c)where the award contains a clerical mistake or an error arising from an accidental slip or omission.

8.The award could be modified or corrected only if it falls within the three circumstance enumerated under Section 15 of the Arbitration Act. By no stretch of imaginations can it be said that the circumstances under which the present application has been filed, will fall within any one of the three grounds mentioned under Section 15 of the Arbitration Act. It will be open to the respondent herein to seek division of the properties that



were allotted to the father and the brother independently. The fact that one of the arbitrators has given a dissenting opinion, has to be decided by the Court. Once the award is made the judgment of the Court, it will be open to the respondents herein to sue for partition of the properties that were allotted to the father Varadharajulu and their brother Jawaharlal, who are no more. Since, I find the action of the trial Court in allowing the application is beyond the power conferred under Section 15 of the Act, I do not think the order of the trial Court could be sustained.

9. Hence, the Civil Revision Petition is allowed. The order of the trial court allowing application in I.A.No.791 of 2009 is set aside. I.A.No.791 of 2009 will stand dismissed.

10.Considering the fact that the original petition in Ar.O.P.No.76 of 1994 is pending for nearly 27 years, now the trial Court is directed to dispose of the same, within a period of three months from the date of receipt of a copy of this order. Registry is directed to dispatch a copy of this order to the Principal Sub Court, Madurai, forthwith. It is made clear that the claims of the parties are left open to be decided by the Court in appropriate proceedings. No costs.

Sd/-

Assistant Registrar(AD-II)

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/ /2021

Sub Assistant Registrar(CS)

vrn

To

The Principal Sub Judge, Madurai

+3 CC to M/s.K.SAMIDURAI, Advocate (SR-14402 & 14417[F] dated 30/03/2021)

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-14849[F] dated 31/03/2021)

Order made in
C.R.P. (MD)No.941 of 2010(PD)
30.03.2021

ns (CO)

TR(20.04.2021) 4P 6C