



C.R.P. No. 2022 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.2022 of 2018

Pappayammal,
D/o. Subbu @ Sellappa gounder
W/o. Komaragounder

... Petitioner

Vs.

Kandasamy gounder (died)
Ammasi @ Muthugounder (died)
Marappan (died)
Gurusamy (died)

1. Kunjammal
W/o. Marappan
2. Nagarajan
S/o.Marappan
3. Paulraj
S/o. Ammasi @ Muthugounder
4. Annapurani
D/o. Ammasi @ Muthugounder
W/o Thambia Gounder



C.R.P. No. 2022 of 2018

5. Kunjammal @ Nallammal
W/o. Late Gurusamy

6. Kesavan
S/o Late Gurusamy

7. Rani
D/o. Late Gurusamy

8. Valarmathi
D/o. Late Gurusamy W/o Chandrasekaran

9. Sarasu
W/o. Late Muthusamy

10. Selvi
D/o Late Muthusamy

11. Chandrasekaran
S/o. Late Muthusamy

12. Eswari
D/o. Late Muthusamy

... Respondents

PRAYER: Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 14.03.2018 made in I.A.No.306 of 2018 in I.A.No.1344 of 2017 in I.A.No.374 of 2015 in O.S.No. 327 of 2018 on the file of Hon'ble District Munsif Court, Sankari.



C.R.P. No. 2022 of 2018

For Petitioners

: Mr.S.Viswanathan for
M/s. Dass and Viswa Asso.

For Respondents

: Mr.N.Manokaran for R3 to R8

R1, R2, R9 to R12 – No appearance

ORDER

The revision petitioner is the 3rd respondent herein in a final decree application in I.A.No.374 of 2015 and the 3rd defendant in the suit in O.S.No.327 of 1988 on the file of District Munsif, Sankari.

2. The said suit was filed by the plaintiffs for the relief of partition of 1/6th share in respect of entire suit property against the defendants. The defendants contested the suit and then in the suit, preliminary decree was passed by allotting 1/6th share in favour of plaintiffs. Thereafter, an appeal in A.S.No. 15 of 2007 was filed and the same was dismissed on 19.09.2013 and against which, Second Appeal was filed, that was also dismissed on 04.02.2015. Accordingly, the preliminary decree in favour of plaintiffs is



C.R.P. No. 2022 of 2018

confirmed. Therefore, to execute the preliminary decree, an application in

I.A.No.374 of 2015 was filed to allot 1/6th share by appointing a Court Commissioner and a Commissioner was also appointed to divide the property. Thereafter, evidences recorded and both sides arguments heard and the said application is posted for orders. At that time, the 3rd respondent filed an application in I.A.No.1344 of 2017 under Order 20 Rule 18(2) Sec.151 of C.P.C. praying to give a direction to the Commissioner to allot 5/12th share in the suit properties. In that application, they have filed another Interlocutory Application in I.A.No.306 of 2018 under Sec.151 of C.P.C. to reopen the matter and withdraw the said application, since he has committed error in the prayer column as if instead of mentioning 5/12th share in para 2 of the affidavit, the petitioner has mentioned as 10/12th share. So, they want to withdraw the said application and to file a fresh application. That application was dismissed by the trial judge stating that to drag on the proceedings, the petitioner filed the said application. Challenging the said findings, the 3rd defendant/3rd respondent in the final decree application preferred this Civil Revision Petition.



C.R.P. No. 2022 of 2018

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3. The learned counsel for Revision Petitioner submitted that during the pendency of proceedings, Defendants 1 and 2 died. Hence, there is change in the share, so she has to necessarily amend the prayer in respect of shares of their legal heirs. Accordingly, she filed the application to claim 5/12th share in the property, but erroneously mentioned as 10/12th share in the affidavit. So, she want to withdraw the same and to file a fresh application, but the same was not appreciated by the trial court. If she is not permitted to file a fresh application, her right over the property will be defeated. Hence, the Revision Petitioner prayed to set aside the findings of learned trial judge.

4. On considering submissions of both sides and on perusal of records, it reveals that the suit is filed in the year of 1985 for the relief of partition and it was transferred to District Munsif Court, Sankari and renumbered as O.S.No. 327 of 1988. Till date, the plaintiffs are not able to enjoy the fruits of the decree, one way or other, the defendants filed applications and not permitting the plaintiffs to get the property through the



C.R.P. No. 2022 of 2018

court commissioner. However, on seeing the facts, it reveals that the original suit in O.S.No. 327 of 1988 was decreed in favour of plaintiffs, thereafter, first and second appeal was also filed and the same were ended in favour of plaintiffs in the year of 2017 itself. Thereafter, she filed an application for division of the property through the commissioner and thereafter, the 3rd defendant filed an application to amend the prayer column by including her share in the property. Now, the present application was filed to withdraw the said application in I.A.No. 1344 of 2017. On seeing the conduct of 3rd defendant, due to filing of enormous applications, the plaintiffs are not able to get the decree in time. But, admittedly, during the pendency of proceedings, Defendants 1 and 2 died and share allotted to defendants 1 and 2 is 5/6th share, now it has to be changed. Of course, there is no specific order in respect of the said share in the preliminary decree as rightly pointed out by the plaintiff's counsel. But, admittedly, the defendants have to pay necessary court fee for their share by showing how they are entitled 5/12th share before the final decree proceedings. Hence, the Revision Petitioner is not entitled to withdraw the application, on the other hand, a direction is given to the revision petitioner to work out her remedy



C.R.P. No. 2022 of 2018

and also to explain to the court how they are entitled for 5/12th share on the death of defendants 1 and 2. Accordingly, this Civil Revision Petition is disposed of and the trial court is directed to dispose the final decree application within a period of three months from the date of receipt of copy of this order. Both parties are directed to cooperate with the proceedings. No costs.

02.11.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To

District Munsif,
Sankari.



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C.R.P. No. 2022 of 2018

T.V.THAMILSELVI, J.

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C.R.P.No.2022 of 2018

02.11.2022