



CRP.(NPD).No.2672 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM:

**THE HON'BLE Mr. JUSTICE N.SESHASAYEE**

CRP.(NPD).No.2672 of 2021  
and C.M.P.No.19665 of 2021

V.Balasubramanian,  
S/o.Late Velumayil Thevar

... Petitioner

Vs.

V.Muthukumar  
S/o.Late Velumayil Thevar

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 25.10.2021 in I.A.No.1130 of 2017 in O.S.No.1006 of 1999, passed by the learned I Additional District Munsif, Coimbatore.

For Petitioner : M/s.Ashok Menor  
for Mr.K.Venkatesan

For Respondent : Mr.R.Marudhachalamurthy

### **ORDER**

The Revision is filed herein by the plaintiff in O.S. No.1006 of 1999 on the file of District Munsif Court, Coimbatore, has approached this Court



challenging an order in I.A.No.1130 of 2017 had taken out for condoning a delay of 726 days in filing the application to set aside an exparte final decree.

2.As could be gathered now, the suit is laid for partition and the preliminary decree came to be passed by which, each of the three parties to the suit were allotted 1/3<sup>rd</sup> share each. Subsequently, the 2<sup>nd</sup> defendant took out I.A.No.2727 of 2017 for passing final decree. The plaintiff / the 1<sup>st</sup> respondent in the interlocutory application remained exparte. The Court concerned appointed a Commissioner to divide the property by metes and bounds and to suggest allotment of such divided shares. During the Commissioner's visit to the property, the plaintiff was physically present, yet he did not choose to participate in the final decree proceedings. Ultimately the final decree came to be passed.

3.The Commissioner has divided the entire property into Plot A, Plot B and Plot C starting from North to South. He has suggested that the northern most plot (Plot A) maybe allotted to the 2<sup>nd</sup> defendant, the middle plot (Plot B) to the 3<sup>rd</sup> defendant and the southern most plot (Plot C) to the plaintiff.



4. So far as the I.A. No.1130 of 2017 goes, the trial Court dismissed it and it is now under challenge.

5. Before getting into the merit of the cause adduced for the condonation of the delay, this Court wanted to ascertain how the revision petitioner/ plaintiff is affected by final decree.

6. Learned counsel for the revision petitioner would submit that the Commissioner's report and the plan does not reconcile and even though the final decree is in tune with the Commissioner's report, yet the plan that was appended to the final decree was not in tune with the final decree passed. It may be explained.

7. As already indicated, the middle plot (Plot B) was to be allotted to the 3<sup>rd</sup> defendant, and C plot (southern most plot) was to be allotted to the plaintiff. The final decree also reflects the same. However, in the Commissioner's plan, the indication was that the B plot was shown as the plot allottable to the plaintiff whereas it should go to the 3<sup>rd</sup> defendant. The southern most plot (Plot C) which was allottable to the plaintiff was shown to have been allotted



to the 3<sup>rd</sup> defendant. Since the Commissioner's plan was tagged to the final decree and is made part of the final decree, it apparently leads to certain inconsistency. For correcting this inconsistency it doesn't require that the entire final decree need to be set aside. After all it is an apparent mistake of the Court which the Court can correct even under section 152 of C.P.C.

8.This Court therefore directs the trial Court to *suo motu* take up the final decree passed in O.S.No.1006 of 1999 and put all the parties to the suit on notice and then make such necessary correction in the Commissioner's plan in order it may match with the allotment made under the final decree. Turning to the merit of the present application, this Court doesn't find any need to interfere with the same, in view of the direction hereinabove given.

9.Subject to the above direction, this Civil Revision Petition is disposed of. Consequently, the connected C.M.P.No.19665 of 2021 is closed. No costs.

21.03.2022

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To



The I Additional District Munsif Court  
Coimbatore

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N.SESHASAYEE, J.,

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