



C.M.P.No.26302 of 2019

in

SA.No.1085 of 1989

KRISHNAN RAMASAMY, J.,

This Civil Miscellaneous Petition has been filed to substitute paragraph nos.2 and 3 of the decree dated 04.12.2001 made in S.A No.1085 of 1989.

2. According to the petitioners, paragraph Nos.2 and 3 of the decree dated 04.12.2001 made in S.A.No.1085 of 1989 has to be substituted as follows:

"2. That on such deposit as stated in clause one of this decree by the appellants 2 to 7 (LRs of the deceased first appellant herein namely B.Kandasamy) and the respondents 2 to 6, the first respondent/sole defendant be and hereby is directed to convey the suit property within a period of four weeks from the date of deposit of the above said amount.

3. That if the first respondent/sole defendant fails to convey the suit property, the appellants 2 to 7 (LRs of the



deceased first appellant herein namely B.Kandasamy) and the respondents 2 to 6 are entitled to get conveyance of the said suit property through Court at the expenses of the respondent/defendant and"

instead of

"2.That on such deposit as stated in clause one of this decree by the appellants 2 to 7(LRs of the deceased first appellant herein namely B.Kandasamy), the first respondent/sole defendant be and hereby is directed to convey the suit property within a period of four weeks from the date of deposit of the above said amount.

3.That if the first respondent/sole defendant fails to convey the suit property, the appellants 2 to 7(LRs of the deceased first appellant herein namely B.Kandasamy) are entitled to get conveyance of the said suit property through Court at the expenses of the respondent/defendant and"

3. By referring to the above paragraph, the learned counsel for the petitioners submits that the father of the petitioners herein, namely, Balakrishna Chettiar, filed a suit for specific performance against the 1st respondent herein in O.S.No.608 of 1980, which was dismissed and the



same was confirmed in the appeal by the lower appellate Court in A.S.No.21 of 1984. Later, the said Balakrishna Chettiar died on 23.11.1987. Thereafter, Second Appeal in S.A.No.1085 of 1989 was preferred wherein, the other legal heirs of the deceased father of the petitioners were arrayed as respondents 2 to 6. Pending Second Appeal, the appellant Mr.B.Kandasamy died and hence, his legal heirs were impleaded as the appellants 2 to 7. By judgment dated 04.12.2001, this Court has set aside the decree and judgment of Courts below and directed the 1st defendant to execute sale deed in favour of the plaintiff on deposit of the sale consideration. In the Second Appeal, the petitioners who are arrayed as respondents 2 to 6 were remained ex parte as they do not have any knowledge about it. Thereafter, the decree and judgment passed in S.A.No.1085 of 1989 dated 04.12.2001 was confirmed by the Hon'ble Supreme Court vide in its order dated 26.04.2017 in Civil (Appeal) No.1846/1847 of 2004. Thereafter, the brother of the petitioners, namely, B.Shanmugam, who is the 3rd respondent in SA.No.1085 of 1989 died during May 2017. At this



junction, when the petitioners tried to get execution of sale deed from the 1st respondent/defendant as per the decree and judgment of this Court in S.A.No.1085 of 1989, the petitioners came to know that there is an error contained in paragraph nos. 2 and 3 of the decree dated 04.12.2001 in SA.No.1085 of 1989, stating that the appellants 2 to 7 are the legal heirs of the deceased 1st Appellant namely B.Kandasamy, are entitled to get conveyance of said suit property through Court and ignored the fact that the petitioners are also brothers and sisters of the deceased 1st appellant, equally entitled to 1/6th share of the suit property along with the deceased 1st appellant.

4. According to the petitioners, the appellants 2 to 7 are admittedly entitled to 1/6th share in the suit property and the respondents 2 to 6 are entitled to the remaining 5/6th share of the suit property i.e, 1/6th share each. Therefore, the learned counsel seek to rectify the aforesaid error found in paragraph nos. 2 & 3 of the decree dated 04.12.2001 made in S.A. No.1085 of 1989, in the interest of justice otherwise, serious



prejudice would be caused to the petitioners as they may not get their respective shares in the suit property. On the other hand, no prejudice would be caused to the respondents.

5. Notice was served on the respondents through Court as well as privately after filing this application. The learned counsel appearing for the 1st respondent has not raised any serious objections, while there is no appearance on behalf of other respondents.

6. Considering the submissions made by the learned counsel and also in view of the fact that admittedly, the appellants 2 to 7 are entitled to 1/6th share in the suit property and the respondents 2 to 6 are entitled to the remaining 5/6th share of the suit property, i.e. 1/6th share, this Court feels that it would be appropriate to rectify the error found in paragraph nos.2 and 3 of the decree dated 04.12.2001 made in S.A.No.1085 of 1989.



7. Accordingly, these applications are allowed. Registry is directed to incorporate paragraph nos.2 and 3 as mentioned above in the decree dated 04.12.2001 made in S.A.No.1085 of 1989 and draft a fresh decree and issue the same. No costs.

14.09.2022

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