



C.R.P.(NPD).No.4338 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.03.2022**

CORAM:

THE HON'BLE MR.JUSTICE **C.V.KARTHIKEYAN**

C.R.P.(NPD).No.4338 of 2018
and C.M.P.No.23719 of 2018

Amirtham (Died)

1.S.Sekar

2.S.Selvam

3.S.Baby

.. Petitioners

Vs.

S.Latha

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal Order dated 29.08.2018 passed in E.P.No.01 of 2017 in O.S.No.52 of 2002 on the file of Learned District Munsif, Harur.

For Petitioners : Mr.S.Saravanakumar

For Respondent : Mr.J.Hariharan for Mr.V.Nicholas



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ORDER

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This Civil Revision Petition has been filed to set aside the Fair and Decretal Order dated 29.08.2018 passed in E.P.No.01 of 2017 in O.S.No.52 of 2002 on the file of the Learned District Munsif, Harur.

2. The revision petition has been filed questioning the order passed in E.P.No.1 of 2017 in O.S.No.52 of 2002. The suit had been instituted nearly about 20 years back seeking partition and separate possession. In that particular suit, the plaintiff's claim of 1/5th undivided share had been recognized in the suit schedule properties. A preliminary decree accordingly was passed on 31.12.2004 which is about 18 years back, but still, inspite of such a long period the plaintiff therein is not able to enjoy the fruits of the decree.

3. Thereafter, in the year 2008 the plaintiff S.Latha had settled the undivided 1/5th share in the suit schedule property in favour of her husband by way of a registered document.



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4. A final decree has been passed on 14.09.2015 and thereafter, execution petition was filed seeking possession and an order was passed on 29.08.2018 affirming the decree.

5. A contention was raised by the revision petitioner that since the original plaintiff / decree holder had settled the property in favour of her husband pending the Execution Petition proceedings the said settlement deed is hit by Section 52 of the Transfer of Property Act and therefore, the decree has to be declared as void and so also the settlement should be declared as void. The learned District Munsif, Harur negated such a contention which has resulted in the filing of the present revision petition.

6. Heard Mr.S.Saravanakumar, learned counsel for the petitioners and Mr.J.Hariharan for Mr.V.Nicholas, learned counsel for the respondent.

7. The learned counsel for the petitioners made an attempt to impress this Court that the settlement deed has been executed in the year 2008, after the preliminary decree has been passed and before the final



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decree was passed, and that such transaction should be interfered with and should be declared as void.

8. It must be kept in mind that 1/5th undivided share has been recognized. As a matter of fact, the settlement has been executed by the plaintiff in favour of the respondent's husband and not in favour of any third party. This particular property which has been settled can still allotted to the share of the plaintiff and any imbalances can be worked out by way moiety.

9. The learned District Munsif, Harur has directed that possession as claimed be granted. Pursuant to the decree. I would leave all issues to be decided by the learned District Munsif, Harur at the time of trial and no interference is called for in the impugned order.

10. This Civil Revision Petition is dismissed. No costs.

07.03.2022

rna

To

The District Munsif,
Harur.



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C.V.KARTHIKEYAN, J

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