



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P (MD)No.1486 of 2010

and

M.P (MD)No.1 of 2010

and

C.M.P (MD)Nos.6347, 6355 & 6356 of 2019

Periyasamy

... Petitioner/
Petitioner/
8th Defendant

Vs.

1.Chellammal

... Respondent/
Respondent/
Plaintiff

2.Kullammal

3.Ramasamy

4.Chinnathurai

5.Annalakshmi

6.Periyasamy

7.Arunachalam

8.Muthu

9.Karuppannan

10.Pitchai

11.Piremkumar

12.Sathish Kumar

13.Pappu

14.Malarkodi

15.Karuppannan

... Respondents/
Respondents/
Defendants

PRAYER :

Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 12.07.2010 passed by the District Munsif, Manappari in I.A.No.37 of 2010 in O.S.No.436 of 1996.



For Petitioner : Mr.T.Antony Arulraj
For Proposed : Mr.S.Deenadhayalan
R-17 & R-18 in C.M.P(MD)Nos.6347, 6355 & 6356
of 2019
For R-1, R-2 & R-3 : No appearance
For Proposed
R-16 : Died

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ORDER

The present revision petition has been filed challenging an order in which the application filed by the petitioner to condone the delay of 959 days in filing an application to set aside in exparte final decree was dismissed.

2. The present revision petitioner is the eighth defendant in a suit for partition. According to the petitioner, he has purchased one acre and six cents from the tenth and eleventh defendant in the suit. A preliminary decree was passed in the said suit on 28.02.2001, in which the share of the plaintiff alone was declared. The share of other sharers were not declared on the ground that they have not paid the Court fee.

3. Based upon the said preliminary decree, plaintiff filed an application in I.A.232 of 2004 for passing a final decree. A final decree was passed on 06.03.2007. According to the petitioner in the said final decree, whatever property that was purchased by the eighth defendant has been wrongly allotted to the plaintiff instead of being allotted in favour of his vendor namely, the eleventh defendant. However, the petitioner was not vigilant enough in contesting the suit or the final decree proceedings. Hence, he has filed an application to set aside the exparte final decree with a delay of 959 days.

4. Wherever an undivided share is purchased by a co-owner, the purchaser is entitled to fix himself in the shoes of his vendor and he is entitled to get the allotment of the said property in the name of his vendor. However, the said equity can be exercised by the purchaser only if, he is vigilant enough during the preliminary decree and final decree proceedings. In the present case, the revision petitioner had not paid the Court fee and hence his share was not declared in the preliminary decree and final decree has been passed only in favour of the plaintiff. That apart, the purchaser of an undivided share is only entitled to the share of his vendor and he cannot insist upon the exact property that was purchased by him from the tenth and eleventh defendant. In view of the above said findings, there would not be any necessity to set aside the final decree proceedings. However, the revision petitioner/eighth defendant is at liberty to file an application for passing of a supplementary preliminary decree after payment of requisite Court fee and based upon the said preliminary decree, he has entitled to file a final decree application to get allotment of property as per the share legally available to his vendors namely, the tenth and eleventh defendants in the suit.



5. With the above said observation, this Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

btr

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The District Munsif,
Manappari.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T. ANTONY ARUL RAJ, Advocate (SR-17683[F] dated 11/04/2022)

+1 CC to M/s.S. DEENADHAYALAN, Advocate (SR-18347[F] dated 12/04/2022)

Order made in
C.R.P (MD)No.1486 of 2010
08.04.2022

MK/27.04.2022/3P/6C