



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P (MD) No.1108 of 2022

and

C.M.P (MD) No.4464 of 2022

1.T.Angaiyar Kanni
2.T.Durai Rama Chidambaram @ Chandran
3.T.Jyothi Venkatachalam
4.T.Ravi
5.T.Gnanasundaram
6.T.Singaravelan
7.T.Elangovan
8.T.Annam @ Thamaraiselvi
9.T.Valli

... Petitioners/
Respondents 2-10/
Defendants 2-10

Vs.

V.Muthuramalingam (Died)
M.Jegathammal (Died)

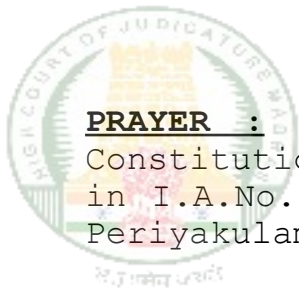
1.M.Palanivel
2.M.Vengatachalam
3.M.Selvamani
4.E.Nagavalli

... Respondents 1-4/
Petitioners/
Plaintiffs

V.Balasubramanian (Died)

5.Jothi
6.Vidya
7.Thilagavathi
8.Parvathi
9.Jothi Meena
10.Jothi Venkatachalam
11.Shanmugam
12.Thamilarasi
13.Kalavathi
14.Uma
15.Manivannan

... Respondents 5-15/
Respondents 5 -15
Defendants 11-21



PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India as against the order, dated 29.10.2021, made in I.A.No.1 of 2020 in O.S.No.34 of 2010 on the file of Sub Court, Periyakulam.

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For Petitioners : Mr.R.Suriya Narayanan

For Respondents : Mr.C.Murugavel

ORDER

The present Revision Petition has been filed by the defendants 2 to 10 in O.S.No.34 of 2010 which was filed for passing of preliminary decree in the suit for partition. The preliminary decree was passed in the said suit on 31.01.2020 and the defendants 2 to 10 have filed A.S.No.24 of 2021 before the Principal District Judge, Theni.

2. According to the learned counsel for the respondent, an order of interim stay of passing of final decree has also been passed by the First Appellate Court.

3. The plaintiff has filed I.A.No.1 of 2020 for passing a final decree. The case of the petitioner is that, though a preliminary decree has been passed for 11 properties, the application for passing of final decree has been filed only for 10 items excluding the tenth item by the plaintiff in the final decree proceedings.

4. According to the learned counsel for the petitioner, this item No.10 has been specifically excluded on the ground that the plaintiff has sold the said property. In case, if the defendants failed to convince First Appellate Court, the defendants would also be entitled to their respective share in the tenth item. Hence, leaving the tenth item is not legally sustainable. However, learned Subordinate Judge, Periyakulam has accepted the case of the plaintiff / decree holder and appointed an Advocate Commissioner to file a report excluding the tenth item.

5. Learned counsel for the respondent has submitted that he has no objection for inclusion of the tenth item in the final decree proceedings. The said submission is recorded. The final order passed by the learned Subordinate Judge in I.A.No.1 of 2020 on 29.10.2021 is modified to the extent that in the final decree proceedings, the Advocate Commissioner shall take into consideration item No.10 of the suit schedule properties also for filing a report. Except this modification, the impugned order is confirmed in other aspects.



6. Accordingly, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Vacation Officer

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Sub Judge,
Periyakulam.

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MGJ(09.06.2022) 3P 2C