



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :28.02.2022

CORAM:

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THE HONOURABLE MRS. JUSTICE S.ANANTHI

C.R.P. (MD).No.1601 of 2019

and

CMP(MD) Nos.8439 and 8440 of 2019 and 8118 of 2021

Kulusum Beevi @ Kulusammal	... Petitioner/Petitioner/ ... 2 nd Respondent/2 nd Defendant
	Vs.
1.A.Sultan Batcha	... 1 st Respondent/1 st Respondent/ Petitioner/Plaintiff
2.Anvar Batcha Hyrunnisa (died)	... Respondents 2 to 3/ Respondents 2 to 3/ Respondents 1 & 3 / Defendants 1 & 3
P.Marimuthu (died) 3.P.Chinnaiah Vanniar 4.K.E.Sheik Dawood 5.S.Mohamed Basheer 6.S.Adam Malick 7.S.Mohamed Feroz 8.S.Mohammed Mubarak Sha	... Respondents 4 to 10/ Respondents 4 to 10/ Respondents 4 to 10/ Defendants 4 to 10

PRAYER : This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure Code, to call for the records relating to the impugned fair and decreetal order dated 11.10.2018 and made in EA No.25 of 2015 in E.P.No.78 of 2012 in O.S.No.120 of 1997 on the file of District Munsif Court,Thanjavur and set aside the same and allow this civil revision petition.

For Petitioner	: Mr.V.S.Kumaraguru
For R1	: Mr.K.Sekar
For R2	: Left
For R3	: Deceased
For R4 to R8	: No appearance



O R D E R

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 11.10.2018 made in EA No.25 of 2015 in E.P.No.78 of 2012 in O.S.No.120 of 1997 on the file of District Munsif Court, Thanjavur. The said application was filed by the petitioner under Section 151 of CPC and Section 3 of Partition Act, 1893, to direct the first respondent/plaintiff to sell the property to the second defendant.

2.Heard the learned counsel appearing for the petitioner and learned counsel for the first respondent and perused the records.

3.The suit was filed by the first respondent/plaintiff for a preliminary decree in terms of final decree passed in O.S.No.4 of 1979 on the file of the District Munsif Court, Thanjavur and final decree was passed in the suit on 10.01.2012 and EP No.78 of 2012 was also filed and as per the Commissioner report, the property was divided into A and B schedule and one portion was handed over to the respondent/plaintiff on 09.03.2015 and the Execution Petition was posted on 15.06.2015 for recording delivery. At this stage, the second defendant filed the above petition.

4.The revision petitioner was already set as ex parte in the EP proceedings and also property was handed over to the first respondent/ plaintiff even in the year 2015. The revision petitioner filed the above Execution Application in the year 2015 and the learned District Munsif, Thanjavur, disposed the matter in the year 2018. Only in the year 2019, this civil revision petition was filed.

5.The learned counsel for the revision petitioner has relied on the judgment reported in **AIR 1997 SCC 471** in the case of **Ghantesher Ghosh Vs Madan Mohan Ghosh and others** and submitted that at all the relevant stages of the litigation between the contesting co-owners till the litigation reaches its terminus by way of full and final discharge and satisfaction of the final decree for partition, a co-owner can file petition under Section 4 of CPC. But on a perusal of the records, it is seen that in the case on hand, already final decree was passed and possession was also handed over to the first respondent/plaintiff. So, litigation reached its terminus. Therefore, the learned District Munsif, Thanjavur, has rightly dismissed the Execution Application filed by the revision petitioner and this Court finds no irregularity or infirmity in the order passed by the Court below.

6.In the result, this Civil Revision petition is dismissed by confirming the order passed in E.A.No.25 of 2015 on the file of the



District Munsif Court, Thanjavur. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

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/ /2022
Sub Assistant Registrar(CS)

Cp

To

The District Munsif,
Thanjavur.

+1 CC to M/s.V.S.KUMARAGURU, Advocate (SR-9459[F] dated 02/03/2022)

+1 CC to M/s.K.SEKAR, Advocate (SR-9034[F] dated 28/02/2022)

C.R.P. (MD) .No.1601 of 2019
28.02.2022

MGJ(04.05.2022) 3P 4C