



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P(MD)No.1861 of 2015(NPD)

WEB COPY

Velammal

... Petitioner/1st Respondent
/1st Defendant

Vs.

1.Avudaiyammal

... 1st Respondent/Petitioner/
Plaintiff

2.Subramanian

3.Petchiammal

4.Murugan

... Respondents 2 to 4/
Respondents 2 to 4/Defendants 2 to 4

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 25.06.2013 passed in E.P.No.141/2012 in O.S.No.587 of 2004 by the Principal District Munsif, Tirunelveli.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.D.Nallathambi

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 25.06.2013 passed in E.P.No.141/2012 in O.S.No.587 of 2004 by the Principal District Munsif, Tirunelveli.

2.The first respondent is the plaintiff and the petitioner is the first defendant.

3.The first respondent is the plaintiff has filed a suit in O.S.No.587 of 2004 before the II Additional District Munsif, Tirunelveli, for partition. A preliminary decree was passed on 04.04.2005 declaring that the first respondent is entitled to 1/3rd share in the suit property. Thereafter, the first respondent filed a petition for final decree in I.A.No.140 of 2006, in which, an Advocate Commissioner was appointed and the Advocate Commissioner inspected the property and filed a report. Based on the Advocate Commissioner's report, final decree was passed. Thereafter, the first respondent filed a petition in E.P.No.141 of 2012 for delivery of the property as per the final decree. The said EP was allowed. Against which, the petitioner filed the present civil revision petition.



4.The learned counsel appearing for the petitioner submitted that the total extent of the property is 2.08 cents and the first respondent is entitled to get 1/3rd share, which is only 292 ½ square feet, whereas, the petitioner had claimed 386 square feet with Mangalore tiled roof house, which was not valued properly. Therefore, the learned counsel prays that the order of the trial Court is liable to be set aside.

5.Heard Mr.H.Arumugam, learned counsel appearing for the petitioner and Mr.D.Nallathambi, learned counsel appearing for the respondents and perused the materials placed before this Court.

6.Admittedly, the first respondent filed an execution petition for delivery of the property, as per the final decree passed in I.A.No.140 of 2006, in which, Advocate Commissioner was appointed and he inspected the property and filed a report. In the said report, he has stated the reason for allotting 386 square feet to the first respondent and also he has also valued the suit property. Based on the Commissioner's report, the trial Court passed the final decree. The petition to condone the delay in filing the petition to set aside the ex-parte final decree was dismissed and the revision to challenge the said dismissal order also dismissed. Therefore, the petitioner may not have any valid grounds to set aside the order passed in the execution petition. Therefore, there is no merit in the revision. Hence, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Principal District Munsif, Tirunelveli.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 Copies)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-1090[F] dated 10/01/2022)

Order made in
C.R.P (MD)No.1861 of 2015(NPD)
07.01.2022

sp(CO)

TR(31.01.2022) 2P 5C