



CRP(PD)(MD)No.185 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.185 of 2017 and
CMP(MD) No.811 of 2017

N.Ganesan (Died)

2.G.Sundarambal

3.L.N.Shanthi

... Petitioners

(Petitioners 2 & 3 are brought on record as Lrs of the deceased sole petition vide Court order dated 04.12.2017, made in CMP(MD) No.10747 of 2017 by JNBJ)

Vs

1.N.Nagarathinam (Died)

2.N.Saravanamoorthy

3.N.Manickavasagam(Died)

4.K.Sethulakshmi

5.M.Vatsala Manickavasagam

6.M.Sivanandham

Rep by his power agent M.Vatsalamanickam

7.M.Nithyanandam

8.S.Vasudevan

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the impugned order dated 17.11.2016 passed in I.A.No.7 of 2016 in O.S.No.96 of 1981 by the Principal Subordinate Court, Thanjavur and allow this Civil Revision Petition.



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CRP(PD)(MD)No.185 of 2017

For Petitioner : Mr.S.Ramu
For R2, R4 & R7 : Mr.V.K.Vijaya Raghavan

ORDER

This Civil Revision Petition is filed by the first defendant in O.S.No.96 of 1981, as against the order passed by the learned Principal Subordinate Judge, Thanjavur in I.A.No.7 of 2016 in O.S.No.96 of 1981, dated 17.11.2016.

2. The suit in O.S.No.96 of 1981 was filed by the respondents 1 to 4, for the relief of partition as against the first revision petitioner in the year 1981. Preliminary decree was passed on 13.02.1984. The matter went upto the Honourable Supreme Court and thereafter in the final decree proceedings, plaintiffs filed an application in I.A.No.7 of 2016, for appointment of Advocate Commissioner for apportionment of the suit schedule properties and for passing final decree proceedings. The said application was allowed by the trial Court. Aggrieved over the same, the present revision petition is filed by the



CRP(PD)(MD)No.185 of 2017

first defendant in the suit that pending the application the first plaintiff's mother Nagarathinam died and therefore the son of Nagarathinam also entitled for a share. However, the other plaintiffs claim share based on the Will executed by the deceased Nagarathinam, bequeathing all her share in favour of her legal heir excluding the first defendant. The trial Court has proceeded with the issue based on the Will.

3.The learned counsel appearing for the petitioner submits the trial Court allowed the application filed by the plaintiffs for appointment of Advocate Commissioner, to divide the property as 1/5th share each to the plaintiffs and the first defendant as per the preliminary decree. With regard to the share of the deceased Nagarathinam, the trial Court has held that the same shall be decided at a later point of time. Aggrieved over the same, the present Civil Revision Petition is filed.

4.The main contention of the petitioner is that one of the plaintiff, Nagarathinam, as the mother of the petitioner and the other



CRP(PD)(MD)No.185 of 2017

plaintiffs died. Therefore, the suit schedule property has to be divided as 1/4 share each and not as 1/5 share as decided by the trial Court.

5.Today (19.12.2022), when this Civil Revision Petition is taken up for hearing, the learned counsel appearing for the respondents/other plaintiffs submits that though there is a Will executed by the deceased Nagarathinam, to divide the properties among the plaintiffs, excluding this petitioner/defendant, he is not pressing the Will and agreeing for 1/4th share. It can be allotted to the revision petitioner, legal heirs of the first revision petitioner and also to the plaintiffs. He submits that in view of the pendency of the litigation from the year 1981, the second respondent /second plaintiff in the suit Saravanamoorthy has given a written instructions to that effect for settling the issue.

6.Considering the submissions made by the learned counsel for the respondents, this Court is inclined to dispose of this Civil



CRP(PD)(MD)No.185 of 2017

Revision Petition, with a direction to the trial Court to apportion the suit schedule properties as $1/4^{\text{th}}$ each to all the four legal heirs within a period of three weeks from the date of receipt of a copy of this order. Considering the paucity of time, the commissioner shall also inspect the properties and evaluate the value as on date.

7. Accordingly, this Civil Revision Petition is disposed of.

No costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2022

Index : Yes / No.

Internet : Yes / No.

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To

The Principal Subordinate Court, Thanjavur.



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CRP(PD)(MD)No.185 of 2017

B.PUGALENDHI, J.

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19.12.2022