



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(MD)No.663 of 2017

and

C.M.P(MD) No.3000 of 2017

1.Mahadevi (died)
2.A.Ganesh Babu

... Petitioners

(Memo dated 12.12.2021 (filed on 13.12.2021)
in USR No.28/162 is recorded as 1st petitioner
died and second petitioner and respondents 3 to 6
who are already on record, are recorded as LRs of
the deceased 1st petitioner vide Court order dated
17.12.2021 made in CRP(MD) No.663 of 2017)

-vs-

1.N.Ramraj
2.Sokkupapa
3.A.Usharani
4.A.Sujatha
5.A.Jeyam
6.A.Dhanapriya
7.M.Mayamani @ Senthilkumar

... Respondents

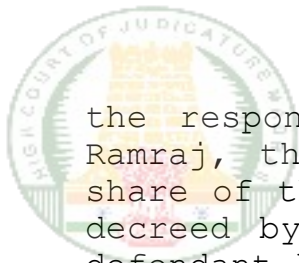
Prayer :- Petition filed under Article 227 of the Constitution of India, to allow this civil revision petition thereby to set aside the fair order and decreetal order dated 30.11.2016 made in I.A.No.511 of 2016 in O.S.No.45 of 1984 on the file of learned Additional District Munsif, Aruppukottai.

For Petitioner	: Mr.T.Antony Arul Raj
For R1	: Mr.S.Parthasarathy
For R2, R4, R5	: No appearance
For R3, R6 & R7	: Dismissed.

ORDER

The respondent 5 and 10, who are the legal representative of the second plaintiff, are before this Court challenging the order passed in IA No.511 of 2016 in OS No.45 of 1984 on the file of the learned Additional District Munsif, Aruppukottai.

2.The suit in O.S.No.45 of 1984 was filed by one Narayanasamy Reddiyar and his son Azhagarsamy Reddiyar, the husband of the first petitioner and the father of the second petitioner and

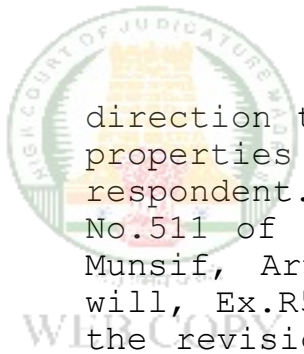


the respondents 3 to 6 herein. The suit was filed against one Ramraj, the son of the first plaintiff for partition of the 2/3rd share of the plaintiff to the suit schedule property. The suit was decreed by judgment and decree dated 18.10.1985. Thereafter, the defendant had filed final decree proceedings in I.A.No.370 of 2010, which is subsequently re-numbered as IA No.511 of 2016. The learned Additional District Munsif, Aruppukottai, by order, dated 30.11.2016, was pleased to appoint an advocate commissioner to divide the property by metes and bounds and grant 5/12th share to the petitioner. The reason for the enhanced share was on account of the fact that the father Narayanasamy Reddiyar had died and the defendants would be equally entitled to the 1/3rd share of the said Narayanasamy Reddiyar along with the second plaintiff and the other respondents. This order is challenged by the legal representatives of the second plaintiff on the ground that the Court below had not taken note of the Will, Ex.R55 dated 21.02.1985, in and by which, the share of the first plaintiff's father had been bequeathed to the second petitioner herein.

3.The revision petitioners would contend that the judgment and decree in OS No.45 of 1984 was challenged before this Court in AS No. 104 of 1986 wherein the Will was brought to the notice of the Court and the Division Bench of this Court had directed that the rights accruing to Narayanasamy Reddiyar, the first plaintiff, had to be worked out in the final decree proceedings. Despite such an order, the same has not been considered by the learned Additional District Munsif, Aruppukottai. Therefore, the order has to be set aside.

4.After hearing both the counsel, it was evident that the dispute was only with reference to 1/3rd share of the first plaintiff, Narayanasamy Reddiyar, as to whether the second plaintiff would be entitled to the share of Narayanasamy Reddiyar by virtue of the Will marked as Ex.R55 or whether it has to be treated that the Narayanasamy Reddiyar had died intestate and therefore, his 1/3rd, share had to be shared amongst all these legal heirs, as a result of which, the first respondent herein would be entitled to 5/12th share as held by the learned Additional District Munsif, Aruppukottai in the final decree. Therefore, a suggestion has been made by this Court that the final decree proceedings would be confirmed with reference to 1/3rd share of the defendants as well as the legal representatives 1/3rd share each to the first respondent herein and the legal representative of the second plaintiff and as regards, the 1/3rd share of the first plaintiff Narayanasamy Reddiyar, the same shall be remitted back to the learned Additional District Munsif, Aruppukottai for fresh consideration on the basis of Ex.R.55, Will which has to be proved by the revision petitioners herein in the manner known to law.

5.Both the counsel have agreed to this suggestion.
<https://hccservices.gov.in/hccservices/> Civil Revision Petition is partly allowed with a



direction to the advocate commissioner to measure and partition the properties by metes and bounds and grant 1/3rd share to the first respondent. With reference to the 1/3rd share of the father, IA No.511 of 2010 is remitted back to the learned Additional District Munsif, Aruppukottai to be considered afresh in the light of the will, Ex.R55, which shall be proved in the manner known to law by the revision petitioner herein. The share of the first plaintiff shall be thereafter re-worked, if the Will is found against the petitioners herein.

6.With the above observations, this civil revision petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp

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

The Additional District Munsif,
Aruppukottai.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-3485[F] dated 01/02/2022)

+1 CC to M/s.S.PARTHASARATHY, Advocate (SR-3758[F] dated 02/02/2022)

C.R.P.(MD)No.663 of 2017

and

C.M.P(MD) No.3000 of 2017

Dated: 31.01.2022

RK(16/02/2022) 3P 4C