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CRP(NPD)No.158



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(NPD)No.1587 of 2010
and M.P.No.1 of 2010**

1.M.Muthubava Kalifulla

2.M.Mohamed Abdulkadhar

3.M.K.Ayishabegam

4.Mafsal Anisha Fathima

... Petitioners

Vs.

1.Minor Ramyabharathi
(Represented by next friend mother
Eswari)

2.Ravichandramurthy

3.Banumathi

4.Chitradevi

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 09.02.2010 in I.A.No.46 of 2006 in O.S.No.11 of 2001 on the file of the Additional District Court (Fast Track Court No.II) Gobichettipalayam.



For Petitioners : Mr.P.Valliappan, Senior Counsel
for Mr.G.RM.Palaniappan

For R1 : Mr.S.Rameshkumar

For R2 to R4 : No appearance

ORDER

The present revision arises against an order passed by the learned Additional District Judge, Gobichettipalayam, in I.A.No.46 of 2006 in O.S.No.11 of 2001, dated 09.02.2010.

2. The respondents 4 to 7 in I.A.No.46 of 2006 are the Civil Revision Petitioners. The suit in O.S.No.11 of 2001 was filed by the 1st respondent/minor Ramya Bharathi, represented by her mother and next friend Eswari. She sought for a decree for partition of the property on the ground that she is entitled to 1/4th share in the ancestral properties, which belong to the family of the plaintiff and defendants 1 to 3.

3. The contest by the defendants 1 to 3 was that the property is not a joint family property, but belongs exclusively to the defendants. According to them, the plaintiff has no share in the same. The said suit was decreed on 10.05.2002.

4. Against the preliminary decree that was granted by the trial Court, a regular



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appeal had been presented by the defendants 1 to 3 before this Court in A.S.No.76 of 2002. When the appeal was taken up on 24.02.2005, the defendants 1 to 3 made a request to the Court that they will be permitted to withdraw the appeal. This Court was also pleased to grant permission to withdraw the appeal. Consequently, the preliminary decree granted in O.S.No.168 of 2000 (renumbered as O.S.No.11 of 2001) dated 10.05.2002 stood confirmed on 24.02.2005.

5. The petitioners herein had purchased the property on 14.07.2000. Unfortunately, for the civil revision petitioners, they neither impleaded themselves in the suit nor in the appeal. The suit having been presented on 06.07.2000, they are but *lis pendens* purchasers. The purchase by the civil revision petitioners, who have already premised are the third parties to the suit and *lis pendens* purchasers, was the entire 3/4th extent of the properties owned by the defendants 1 to 3.

6. Finding that their vendors had not supported them, the civil revision petitioners moved C.M.P.No.5597 of 2005 in A.S.No.76 of 2002 seeking for leave to file a petition to set aside the order of withdrawal of the appeal dated 24.02.2005. When the said application came up for disposal on 28.04.2005, this Court was pleased to pass the following order:

“Since the appeal had already been disposed of, except



permitting the petitioner to work out his rights in appropriate forum, no further orders are necessary in this petition, accordingly, the petition is closed.”

Therefore, the attempt by the civil revision petitioners to reopen the order of dismissal attained finality.

7. Now turning to I.A.No.46 of 2006, the plaintiff moved an application for appointment of an Advocate Commissioner to divide the property and to submit a report so as to enable the Court to pass a final decree in O.S.No.11 of 2001. The said application was allowed on 09.02.2010. Challenging the same, the present revision has been presented by the respondents 4 to 7 in I.A.No.46 of 2006.

8. I heard Mr.P.Valliappan, learned Senior Counsel representing Mr.G.RM.Palaniappan, learned counsel for the civil revision petitioners and Mr.S.Rameshkumar, learned counsel appearing for the 1st respondent. I have carefully gone through the records.

9. Mr.P.Valliappan, learned Senior Counsel appearing for the petitioners vehemently contended that the partition suit, which had been presented by the plaintiff through her mother, is a collusive action, because after the suit had been decreed, (the mother and daughter) plaintiffs have rejoined with Ravichandramurthy,



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who is the contesting 1st defendant. Learned Senior Counsel will draw my attention to the deposition given by the mother in the proceedings initiated in C.C.No.8 of 2001 on the file of the Judicial Magistrate's Court, Sathyamangalam. The said proceedings were initiated by the mother as against her husband/1st defendant/Ravichandramurthy, alleging cruelty and charging the 1st defendant for having violated the provisions of Section 498A of I.P.C.

10. Mr.P.Valliappan, learned Senior Counsel would submit that after the sale on 14.07.2000, the parties have compromised the matter and therefore, I have to treat the decree as a collusive one.

11. I am afraid, the reading of the deposition in a criminal proceedings cannot be treated as an admission in the civil proceedings. In fact, as per the verdict of the Constitutional Bench in *M.S.Sheriff vs. the State of Madras and others AIR 1954 SC 397*, the judgment of the civil Court is not binding on the Criminal Court and vice versa. When such is the case, a statement made during the course of C.C.No.8 of 2001 cannot be treated as an admission. It is at best, the statement made by a living person under the Indian Evidence Act and unless and until it goes the whole hog, it cannot be treated as final and conclusive in the civil proceedings. Therefore, the argument that the admission made by the mother will be binding on the daughter is not acceptable to me.

12. The next point that Mr.P.Valliappan, would urge is that a perusal of the sale



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deed, which has been filed as Ex.B1 in the proceedings would go to show that the alienation had been only for the purpose of settling the debts that the family of the 1st defendant had incurred and therefore, I had to read in to the proceedings, the doctrine of the family necessity and thereby denied the relief that the plaintiff had sought for.

13. I am afraid that I cannot do so because I am sitting in the revision, which had been preferred against an order passed in the final decree. A final decree Court cannot go beyond the preliminary decree and it is bound on all four sides by the preliminary decree. The very point that the property belongs to Ravichandramurthy had been urged before the trial Court and had been rejected and preliminary decree had been passed. The appeal preferred therefrom had also ended in dismissal *albeit* by way of withdrawal. The withdrawal of appeal also has the same effect of dismissal of the appeal on merits. In other words, the decree stands confirmed. Therefore, the final decree Court cannot go beyond the findings that has been granted in the preliminary decree. However, the Division Bench in C.M.P. has granted liberty to the parties to work out their rights in the appropriate forum.

14. Mr.P.Valliappan, learned Senior Counsel for the petitioners would submit that pursuant to the liberty granted, a separate suit has also been presented and the same is pending.

15. It is for the civil revision petitioners/*lis pendens* purchasers to work out
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their right in those proceedings. Qua the present proceedings, I do not find any illegality or irregularity in the order of the trial Court in appointing Advocate Commissioner, since the preliminary decree had attained finality.

16. In fine,

(i) C.R.P.(NPD)No.1587 of 2010 stands dismissed confirming the order passed by the learned Additional District Judge, Gobichettipalayam, dated 09.02.2010 in I.A.No.46 of 2006 in O.S.No.11 of 2001.

(ii) The proceedings having been pending for more than a decade and half, the learned Additional District Judge, Gobichettipalayam, shall give priority to the proceedings and ensure that final decree is passed and all other proceedings are completed on or before 30.04.2024.

(iii) On such completion, a report shall be submitted to this Court. Needless to add, liberty granted by the Division Bench shall continue in favour of the civil revision petitioners. No costs. Consequently, connected Miscellaneous Petition is closed.

06.07.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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V.LAKSHMINARAYANAN,J.



WEB COPY

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To

The Additional District Judge
(Fast Track Court No.II) Gobichettipalayam.

C.R.P.(NPD)No.1587 of 2010
and M.P.No.1 of 2010

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