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C.R.P. No.202 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.202 of 2023
and
C.M.P.No.1642 of 2023

R.Sivasubramaniyan

... Petitioner

Versus

1. R.Periasamy
2. G.Guhan
3. Hemalatha

4. Arulmigu Bhaghavathiamman Deity,
rep.by Dharmakarth K.S.Shanmugam
Kalvettupalayam, Vengumbur Village,
Erode Taluk.

5. Arulmigu Akkaraipatti Ponkalamman
Arulmigu Akkaraipatti Muthusamy and
Arulmigu Molipilli Annamar Swami Deities,
rep. by the Executive Officer,
Arulmigu Varadharaja Perumal Vagaiyara
Thirukkoil Devasthanam,
Vengumbur Village, Erode Taluk.

.. Respondents



C.R.P. No.202 of 2023

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair order and decretal order dated 11.11.2021 passed in I.A.No.2 of 2021 in O.S.No.156 of 2014 by the learned 1st Addl. District Judge, Erode.

For Petitioner : Mr.N.Thiagarajan

For Respondents : Ms.Chitra Sampath,
Senior Advocate for
Mr.T.S.Baskaran for R1

Mr.R.Sunilkumar for R2 and R3

Mr.V.Jeevagiridharan,
Addl. Govt. Pleader for R4 & R5

ORDER

Challenging the impugned order passed in I.A.No.2 of 2021 in O.S.No.156 of 2014 passed by the learned 1st Addl. District Judge, Erode, the Revision Petitioner/1st defendant preferred this Civil Revision Petition.

2. The Revision Petitioner and the 1st respondent are brothers and they are aged about 70 years, further the suit connected with C.R.P. is pending for the past 10 years, on considering that, this court suggested to settle the issue between them in respect of division of property and for that, they after



C.R.P. No.202 of 2023

accepting the suggestion given by this court, filed consent affidavit to settle the issue. The respondents 2 and 3, who are the legal heirs of their deceased sister viz., Thangammal @ Thangam Ganapathy of the Revision Petitioner also agreed to settle the issue amicably.

3. Heard the counsels appearing on either side. Since the revision petitioner already settled some property in favour of Hindu Religious and Charitable Endowment Board, the counsel appearing for the said board also heard.

4. For the sake of convenience, the parties are referred as per the ranking in the suit.

5. Admittedly, the suit in O.S.No. 156 of 2014 was filed by the plaintiff for the relief of partition and other consequential relief against the defendants 1 to 3 herein. The plaintiff, 1st defendant and mother of defendants 2 and 3 viz., Thangammal @ Thangam Ganapathy are the sons and daughter of one K.S.Ramasamy Gounder. Before the trial court, the



defendants contested the suit on various grounds, on the other hand, prior to the suit in respect of his undivided share in the suit properties, the 1st defendant executed a settlement deed in favour of 4th and 5th respondent temples. Therefore, those temples were added as parties to the proceedings.

6. In the meantime, before the trial court, when the suit was posted for enquiry, the plaintiff filed an application in I.A.No.2 of 2021 praying to include a house property situated at Chennai as a suit property and the same was allowed by the trial court. Later, the said house property situated at Chennai was included as one of the suit property. Now, challenging the same, the 1st defendant filed this present C.R.P. through which he denied the claim of the plaintiff in respect of the said house property, contending that it is his self acquired property and for the past 30 years, he enjoyed the property as an absolute owner. In this occasion, while proposing the settlement, the plaintiff viz., R.Periasamy as well as defendants 2 and 3, who are the legal heirs of deceased sister Thangammal @ Thangam Ganapathy are all agreed not to claim any share in the house property at Chennai and also agreed to forego the Will said to be executed in favour of plaintiff viz.,



R.Periasamy by his mother. On the other hand, they prayed to divide the suit property (O.S.No.156 of 2014) into 3 equal shares and prayed to allot each 1/3rd share.

7. Based on the consent given by both plaintiff and defendants 1 to 3 along with their counsels, the settlement have been arrived between the parties. Accordingly, by way of granting preliminary decree in the suit properties, 1/3rd share was allotted to the plaintiff, 1/3rd share was allotted to 1st defendant and 1/3rd share allotted jointly to 2nd and 3rd defendants, who are legal heirs of deceased sister Thangammal @ Thangam Ganapathy. Thereafter, at the consent of all parties, Thiru T.Senthil Kumar, Advocate, Erode was appointed by this court as advocate commissioner to divide the property, accordingly the Commissioner with the help of Taluk Surveyor as well as with the assistance of plaintiff and defendants 1 to 3 along with revenue officials measured the property and submitted the commissioner's report along with two plans. Based on the commissioner's report, the plaintiff and defendants 1 to 3 have prayed to allot their respective shares in terms of commissioner report. On perusal of two plans viz., Plan No.1 and



Plan No.2, Plan No. 1 is pertaining to the field Nos. 267, 289 and 290 and

Plan No.2 is pertaining to the field Nos. 294, 295 and 296. In the open court, the 1st defendant, who is elder member of the family has agreed to take 1/3rd share which was shown in green colour portion in both plans, since some of his absolute property is situated adjoining to the same. Accordingly, the green colour portion in Plan Nos.1 and 2 are allotted to the 1st defendant (Revision Petitioner). Similarly, by consent, the plaintiff R.Periyasamy was allotted with pink colour portion and the legal heirs of their sister viz., the defendants 2 and 3 are allotted with brown colour portion, thereby properties are allotted in terms of plan Nos.1 and 2.

8. In this occasion, for the convenient enjoyment, both plaintiff and defendants 2 and 3 filed a joint memo and prayed to exchange some property, which was allotted to them. As per the joint memo, they prayed to exchange the following properties in the following manner :-

“1. In plan 1, the pink marked portion as B2 and B3 measuring a total extent of 124 ¼ cents in S.Nos. 290/3 and 289/4 shall stand allotted to the respondents 2 and



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3/defendants 2 and 3, who are the deceased daughter's children viz., Gugan and Hemalatha.

2. In plan 1, the brown shaded portion marked as Part C1 in 267/2, 267/3 and 267/4 shall stand allotted to the 1st respondent/plaintiff R.Periyasamy.

3. In plan 2, the pink shaded portion in S.No.295/16 measuring 3.29 cents (PT-B5) shall stand allotted to the respondents 2 and 3/defendants 2 and 3, who are the deceased daughter's children viz., G.Gugan and Hemalatha.

4. In plan 2, the brown shaded portion in S.No.295/14A measuring 8.93 cents (PT-C5) shall stand allotted to the 1st respondent/plaintiff R.Periyasamy.

5. In plan 2, the part of the pink shaded portion in the southern extremity of S.Nos.295/1, 295/2 and 295/3 measuring about 4 to 5 cents shall stand allotted to respondents 2 and 3/defendants 2 and 3, who are the deceased daughter's children viz., G.Gugan and Hemalatha.



C.R.P. No.202 of 2023

WEB COPY

6. *In plan 2, the brown shaded portion in S.No.294/2 measuring 10 ½ cents (Part C1) shall stand allotted to the plaintiff R.Periyasamy.”*

After recording the joint memo in the presence of all, final decree has been passed in terms of joint memo of compromise and allotted shares to plaintiff and defendants 2 and 3, except the portions contained in the joint memo, the remaining portions allotted to the plaintiff and defendants 2 and 3 are the pink colour and brown colour respectively as per the Plan No.1 and 2 attached with Commissioner's report. In respect of the property at Chennai, it stands in the name of 1st defendant is declared as his absolute property, in which plaintiff as well as defendants 2 and 3 have no right whatsoever. In the meantime, it was stated by either parties that a portion of 2 ½ cents in R.S.No. 296/3 shown as C3 in Plan No.2 was mistakenly omitted to show as a suit property, which is also the property of deceased K.S.Ramasamy Gounder. It is settled proposition that any number of properties can be included in partition while settling the issue between parties. Considering the same, this court passed an order to include the said property as a suit property and the same is allotted to respondents/defendants 2 and 3.



C.R.P. No.202 of 2023

9. On this occasion, a joint memo was also filed on the side of plaintiff and defendants 2 and 3 stating that there was a loan obtained by the father of plaintiff and defendant No.1 viz., K.S.Ramasamy Gounder by mortgaging the property in Survey No.296/3, 295/1 to 10 and availed a loan with Canara Bank, Thamaraipalayam Branch, Erode District in A/c. Nos.1646840010254 and 1646881002040. Further, it was stated that after the demise of K.S.Ramasamy Gounder, the Canara Bank filed a suit in O.S.No.437/2011 for the recovery of the said loan and the same was repaid by them alone viz., Plaintiff and defendant Nos.2 and 3 only and ultimately, the suit was dismissed as the loan was repaid in the year of 2016. However, after discharging the loan, the title deeds to those properties not handed over by the bank as they sought consent from another son/1st defendant. In this regard, they seek a direction from this court to hand over the title documents to them. In this regard, admittedly, the loan was settled by plaintiff and defendant Nos.2 and 3. Therefore, after closing the loan, keeping the document by the bank would cause much inconvenience to the party who settled the loan. Hence, this court directs the Canara Bank, Thamaraipalayam Branch, Erode District to hand over the title documents to



C.R.P. No.202 of 2023

the plaintiff R.Periyasamy, which was deposited in A/c. Nos.1646840010254 and 1646881002040. On receipt of the title documents, the plaintiff is directed to hand over a copy of the title deeds to the 1st defendant as well as to 2nd and 3rd defendants. In this regard, the 1st defendant also not raised any objection to hand over the title deed to the plaintiff.

10. In conclusion, final decree is passed as follows :-

a) The 1st defendant R.Sivasubramaniam is allotted with the following properties :-

- i) an extent of 53 – ½ cents in R.S.No.290/3, shown with green colour in plan No.1, noted as A3.
- ii) an extent of 45 – ¼ cents in R.S.No.289/4, shown with green colour in plan No.1, noted as A2.
- iii) an extent of 1.52 acres in R.S.No.267/2, shown with green colour in plan No.1, noted as A1.
- iv) an extent of 4 cents out of 8 cents in R.S.No.294/1, shown with green colour in plan No.2, noted as A1.



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v) an extent of 5 cents in R.S.No.295/8 part, 9 part and 10 part, shown with green colour in plan No.2, noted as A2.

vi) an extent of 53.10 cents in R.S.No.295/12, shown with green colour in plan No.2, noted as A3.

vii) an extent of 8.93 cents in R.S.No.295/14A, shown with green colour in plan No.2, noted as A4.

viii) an extent of 3.29 cents in R.S.No.295/16, shown with green colour in plan No.2, noted as A5.

b) The plaintiff R.Periyasamy is allotted with the following properties :-

i) an extent of 1.52 acres in R.S.Nos.267/2 part, 267/3 part and 267/4 part, shown with brown colour in plan No.1, noted as C1.

ii) an extent of 1.67 acres in R.S.Nos.267/1 and 267/2 part, shown with pink colour in plan No.1, noted as B1.

iii) an extent of 10 – ½ cents in R.S.No.294/2, shown with brown colour in plan No.2, noted as C1.

iv) an extent of 10 – ½ cents in R.S.No.294/2, shown with pink colour in plan No.2, noted as B1.



C.R.P. No.202 of 2023

WEB COPY

v) an extent of 3 cents out of 6 cents in in R.S.No.294/5, shown with pink colour in plan No.2, noted as B6.

vi) an extent of 45.55 cents in R.S.Nos.295/7, 295/6, 295/5 part, 295/8 part, 295/9 part and 295/10 part, shown with pink colour in plan No.2, noted as B2.

vii) an extent of 6 cents in R.S.No.295/14B, part shown with pink colour in plan No.2, noted as B3.

viii) an extent of 2.93 cents in R.S.No.295/14A, shown with pink colour in plan No.2, noted as B4.

ix) an extent of 8.93 cents in R.S.No.295/14A, shown with brown colour in plan No.2, noted as C5.

c) The defendants 2 and 3 namely Hemalatha and Guhan are allotted with the following properties :-

i) an extent of 79 cents in R.S.No.290/3 part, shown with brown colour in plan No.1, noted as C3.

ii) an extent of 79 cents in R.S.No.290/3 part, shown with pink colour in plan No.1, noted as B3.



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iii) an extent of 45 – $\frac{1}{4}$ cents in R.S.No.289/4 part, shown with brown colour in plan No.1, noted as C2.

iv) an extent of 45 – $\frac{1}{4}$ cents in R.S.No.289/4 part, shown with pink colour in plan No.1, noted as B2.

v) an extent of 12 – $\frac{1}{4}$ cents in R.S.No.294/7 part, shown with brown colour in plan No.2, noted as C2.

vi) an extent of 2 – $\frac{1}{2}$ cents in R.S.No.296/3 part, shown with brown colour in plan No.2, noted as C3.

vii) an extent of 36.22 cents (+) 4.7 cents = 40.92 cents in R.S.Nos.295/1, 295/2, 295/3 part and 295/4, shown with brown colour in plan No.2, noted as C4 as well as the southern portion of R.S.Nos.295/1, 295/2 and 295/3 (4.7 cents) with pink colour.

viii) an extent of 3.29 cents in R.S.No.295/16, shown with brown colour in plan No.2, noted as C6.

ix) an extent of 3.29 cents in R.S.No.295/16, shown with pink colour in plan No.2, noted as B5.



d) Perused Commissioner's report. The common entitlements are as follows :-

- i) the plaintiff, 1st defendant and defendant Nos.2, 3 (jointly) are entitled each 1/3rd share (from the share already having) in the well in R.S.No.290/4 measuring 6 cents as noted in Plan No.1.
- ii) Similarly, they are entitled each 1/3rd share as above in the well measuring 8 – ½ cents in R.S.No.267/4 and in the well in R.S.No.267/2 measuring 8 cents as noted in plan No.1.
- iii) the plaintiff, 1st defendant and defendant Nos.2, 3 (jointly) entitled to irrigate their respective lands allotted now in the ratio of 1:3 by using the electric motors i.e. S.C.No.198/3 HP, S.C.No.492/7.5 HP and S.C.No.105/5 HP which are all, already fitted in the wells situated in R.S. Nos. 290/4, 267/4 and 267/2 respectively.
- iv) without any hindrance to ingress and egress their respective property, the plaintiff and the defendants 1 to 3 are entitled to make use of 8 – ½ cents area in R.S.Nos. 267/4 part, 289/4 part, 290/3 part, 290/5 part and 289/3 part with a width of 4 feet which is shown as



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red line in plan No.1 for the purpose of laying the underground pipeline to take water for the purpose of irrigation from the common wells to their respective lands.

v) the yellow marked cart track in R.S.No.267/5 measuring 8 – ½ cents, the continuing cart track in R.S.Nos.267/3 and 267/2 upto the common well (in R.S.No.267/2) measuring 7 cents, totally measuring 15 – ½ cents as shown in the plan No.1 to be used by the plaintiff and the defendants 1 to 3 in common to reach their respective properties as well to reach the common wells. The parties are also entitled to lay underground pipeline in the above yellow marked cart track. Further, 1 cent reserved on the eastern side of the well in R.S.No.267/2 as noted in the Plan No.1 for common usage.

vi) the well in R.S.No.294/15 measuring 5 cents as in Plan No.2 to be used by the plaintiff and defendants 1 to 3 in common. They are entitled each 1/3rd share as noted in the earlier paragraphs.

vii) the yellow marked pathway in Plan No.2 measuring 5 cents with a width of 6 feet running in R.S.No.295/1 part, 2 part, 3 part, 4 part and 7 part to be used by the plaintiff and the defendants 1 to 3 in



C.R.P. No.202 of 2023

WEB COPY

common, besides laying underground pipeline to take water from the well in R.S.No.294/15 to their respective lands.

viii) in the area measuring $\frac{1}{2}$ (half) cent with a width of 1 meter on the western side of R.S.No.295/7 and 8 as shown in the plan No.2 in red colour, which is the continuation of the yellow coloured 6 feet pathway, to be used to lay underground pipeline to take well water to the properties of the plaintiff and to the 1st defendant, without causing hindrance to the plaintiff for ingress and egress to his land.

ix) the violet coloured portion measuring 3 cents in R.S.No.295/18 to be used in common by the plaintiff and the defendants 1 to 3.

11. Therefore, the partition suit in O.S.No.156 of 2014 pending between the parties before the 1st Addl. District Judge, Erode is ordered to be disposed of as settled out of court in this C.R.P. proceedings. If any applications are pending along with the suit is ordered to be closed.

12. Furthermore, in earlier days by way of gift deed, the 1st defendant conveyed some common undivided suit property to the 4th and 5th defendant



temples and the same was admitted by either side. So, liberty is granted to the 4th and 5th defendant temples to work out their remedy through court of law in the share allotted to the 1st defendant, which is shown in green colour portion in the commissioner's plans annexed with this decree under equity. The properties allotted to the plaintiff and defendant Nos.2 and 3 are no way connected with the gift deed said to be executed in favour of 4th and 5th defendant temples by the 1st defendant.

13. In conclusion, before the trial court for engrossing the final decree, parties are directed to deposit NJS within a period of four weeks from the date of receipt of copy of this order. The web copy of this order shall be used for the purpose of drafting final decree. Thereafter, within two weeks from the date of receipt of NJS, the trial court is directed to draw the final decree in accordance with the above allotment of the properties as plaintiff and 1st defendant are aged more than 70 years old. The report and plan Nos.1 and 2 submitted by Advocate Commissioner is treated as part and parcel of the decree.



C.R.P. No.202 of 2023

WEB COPY 14. On considering the additional steps taken by the Advocate Commissioner, the plaintiff and the defendants 1 to 3 are directed to pay a sum of Rs.10,000/- each towards additional remuneration to the Advocate Commissioner through RTGS.

18.12.2023

Index: Yes/No
Internet: Yes/No
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To

1. I Addl. District Judge, Erode.
2. The Manager, Canara Bank, Thamaraipalayam, Erode Dt.
3. The Commissioner, H.R. & C.E. Department, Chennai.
4. The Public Prosecutor, High Court, Madras.



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C.R.P. No.202 of 2023

T.V.THAMILSELVI, J.

rpp

C.R.P. No.202 of 2023

18.12.2023