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C.R.P. No.864 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.864 of 2022
and
C.M.P. No. 4376 of 2022

E.Durai,
S/o. Late Elumalai Naicker

... Petitioner

Versus

L.Loganayaki,
W/o. Late Kothandam

... Respondent

PRAYER : Civil Revision Petition filed under Sec.115 of Civil Procedure Code, praying to set aside the Order and decree dated 16.12.2021 passed in I.A.No.1 of 2021 in I.A.No. 186 of 2013 in O.S.No.2 of 2008 on the file of learned Addl. District Court, Kancheepuram at Chengalpattu.

For Petitioner : Mr.R.Rajarajan

For Respondent : Mr. V.Elangovan for
Mr.S.Doraisamy



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ORDER

Challenging the impugned order passed by the trial court in I.A.No. 1 of 2021 in I.A.No.186 of 2013 in O.S.No. 2 of 2008, on the file of Addl. District Judge, Kancheepuram, the defendant preferred this Civil Revision Petition.

2. Originally, the suit in O.S.No. 2 of 2008 was filed by the respondent/plaintiff, who is sister of Revision Petitioner herein for the relief of partition. The suit was contested by the defendant and finally, a preliminary decree was passed allotting 1/4th share in item Nos.3 and 6 in I.A.No. 186 of 2013 to the defendant and accordingly, the plaintiff was allotted 1/4th share with regard to the available extent of 70 cents. Therefore, she is entitled only 17.5 cents, but an extent of 4.5 cents was excessively allotted to her. So, the said allotment was objected by the revision petitioner. Hence, he wanted to raise objections with regard to division of property allotting excess share to the plaintiff, but there is a delay of 4 years. Hence, to condone the delay, he filed an application in I.A.No.1 of 2021 and that application was strongly objected by her. After hearing both sides, the trial court dismissed the application stating that nearly about 4 years of delay



cannot be condoned as proper reason was not assigned. Challenging the said finding, the Revision Petitioner/defendant preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner would submit that the trial court failed to take note of the fact that except item Nos.3 and 6 of the suit property, the remaining item Nos.1,2, 4 and 5 are only 5 cents, in which, she is entitled only 1/4th share and not 18 cents, but excessively, 4.5 cents was allotted to her and the same was objected by him, however, the delay was arisen. As a party to the proceedings, he being a defendant in a partition suit, he is entitled to raise such objection, but the trial court without appreciating the legal aspects, erroneously dismissed the application. Hence, he prayed to set aside the same.

4. The learned counsel for respondent/plaintiff would submit that as per the final decree proceedings, out of 22.5 cents, 17.5 cents was sold and the remaining 4.5 cents was under the occupation of encroachers and they have also sold it to some other third party. However, the share allotted by the trial judge is totally valid one, which needs no interference.



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WEB COPY 5. Heard and considered rival submissions of learned counsel for petitioner as well as respondent and perused the records.

6. On considering both side submissions and on perusal of records, as per final decree, the total extent available is 70 cents, in which the respondent/plaintiff is entitled $1/4^{\text{th}}$ share, which comes around 17.5 cents, totally 18 cents. Accordingly, item Nos.3 and 6, she was allotted 18 cents, which totally covers her $1/4^{\text{th}}$ share. It is an admitted fact that she sold that property also. But, excess cents of 4.25 cents in Survey No.417/21D is belongs to the defendant's share, but the same was under the allotment of plaintiff as per final decree proceedings. So, the objections raised by the defendant, as such is maintainable. As a party to the partition suit, he is also deemed to raise objection though he is defendant. Therefore, to avoid multiplicity of proceedings, the delay is ordered to be condoned and the order passed by the trial judge in I.A.No.1 of 2021 in I.A.No.186 of 2013 in O.S.No.2 of 2008 is set aside. Accordingly, this Civil Revision Petition is allowed. However, liberty is granted to the Revision Petitioner to putforth his contentions before the trial court in the final decree proceedings, and the trial



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court is directed to complete the trial and dispose the case within a period of four weeks from the date of receipt of copy of this order. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

23.03.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

Addl. District Judge,
Kancheepuram at Chengalpattu.



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T.V.THAMILSELVI, J.

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