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C.R.P.No.3791 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3791 of 2023

Valliammal

... Petitioner

-Vs-

1. Sekar

Lakshmi Ammal (deceased)

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to direct the Hon'ble Subordinate Court, Ranipet to take file petition (Filing No.SR3128/2022) returned with docket endorsement filed to set aside the dismissal order of I.A.No.745 of 2017 dated 09.02.2021 and dispose it on the basis of merit.

For Petitioner

: Mr.Shanavas for

Mr.J.Shanuaskhan

ORDER

Challenging the impugned docket order passed by learned Sub-Judge, Ranipet in an unnumbered application filed by the plaintiff under Order 9 Rule 9 of C.P.C. praying to set aside the dismissal order dated



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09.02.2021, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondent is dispensed with.

3. Before the trial court, the Revision Petitioner filed an application praying to set aside the dismissal order dated 09.02.2021 and to allot half share in the item No.4 of suit schedule property. That application was returned by the trial judge stating that already the matter was settled out of court and so, there is no application pending as on date, hence, the application was returned. Challenging the said docket order, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that initially, there was a compromise arrived between the parties and during the pendency of final decree application filed in I.A.No.745 of 2017, she filed the said application praying for allotment of her share as per the preliminary decree, however, as a poor lady, she is unable to pay counsel fee, but there was a compromise arrived between the parties stating that the defendant agreed to give share as directed in the preliminary decree. Accordingly, the final decree application was dismissed as withdrawn. So,



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in respect of three items, the respondent divided the share, but he resisted her share in respect of 4th item. Hence, she filed the said application to reopen the same to get the share in the property as agreed in the preliminary decree, but it was not considered by the trial judge and erroneously dismissed the application. Aggrieved over the same, she preferred this Civil Revision Petition.

5. Records perused. On seeing entire records, it would reveals that in the year of 2018, the Revision Petitioner/plaintiff filed the suit for the relief of partition, but as on date, she could not realise the decree passed in the original suit. According to her, as per the assurance given by the defendant, she withdrawn the final decree application, but in respect of 4th item, the defendant refused to give share. So, she wanted to set aside the dismissal order partly passed in the final decree application in I.A.No. 745 of 2017. It is a settled proposition, that the parties to the partition suit can file any number of final decree application to divide the property. Based on the assurance given by the defendant, the plaintiff withdrawn the application. Now, she filed the said application to reopen the same to get the share in the property as agreed in the preliminary decree, as such is very much maintainable. But, the trial judge erroneously failed to take the



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application on file, as such is erroneous one and the same is liable to be allowed. Accordingly, this Civil Revision Petition is allowed and the observation made by the trial judge in the docket order in an unnumbered application is set aside and the said application is ordered to be taken on file. The trial judge is directed to take the application on file and dispose the same within a period of six weeks from the date of receipt of copy of this order. No costs.

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Index : Yes/No
Speaking Order : Yes/No
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To

Sub-Judge, Ranipet.



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T.V.THAMILSELVI, J.

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