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C.R.P.No.1781 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition. No.1781 of 2023
and
Civil Miscellaneous Petition No.11560 of 2023

K.Gnansekaran

... Petitioner

Versus

1.K.Vijayalakshmi

K.Navamani (Dead)

K.Kowsalya (Dead)

2.V.Alamelu

3.K.Manokaran

4.K.Umasankar

5.Devimaheswari

6.Sankari

7.Kumar

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of



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India to set aside the fair and decretal order dated 16.03.2023 passed in I.A.No.2 of 2019 in O.S.No.8189 of 2010 on the file of VII Assistant City Civil Court, Chennai.

For Petitioner : Mr.K.Govi Ganesan
For Respondents : Mr.K.Venkateshwaran for R1

ORDER

This Civil Revision Petition is filed by the fifth defendant aggrieved by the orders dated 16.03.2023 passed in I.A.No.2 of 2019 in O.S.No.8189 of 2010 on the file of the VII Assistant City Civil Court, Chennai, allowing the said application filed by the first respondent /the second defendant to divide the schedule of property with metes and bounds into seven equal shares.

2. According to the petitioner/fifth defendant in the suit, the plaintiff has filed suit in O.S.No.8189 of 2010 for partition, which was decreed and preliminary decree was passed on 15.06.2012 declaring that each party is entitled to 1/8th share in the suit property. The petitioner herein was set ex parte. The plaintiff who filed the suit in O.S.No.8189 of 2010 died on 31.07.2013. After the death of the plaintiff, the first respondent/second defendant claimed for 1/7th share in the suit property and filed an application



for appointment of Advocate Commissioner to inspect the suit property along with qualified surveyor to measure the suit property and divide the same into seven equal shares by metes and bounds and to allot one such share to the first respondent herein. The application filed by the first respondent in I.A.No.02 of 2019 was allowed by the learned VII Assistant Judge, City Civil Court, Chennai on 16.03.2023. Hence the revision.

3. It is claimed that originally on 26.02.2010, the mother and two brothers of the petitioner viz., K.Kowsalya, K.Manokaran and K.Umasankar, defendants 1, 4 and 6 respectively released their $\frac{3}{8}$ th shares in the property in Door No.34, New No.20, Labour Colony, Guindly property to an extent 1075 square feet, which was purchased in the year 2001, and registered as Doc.No.81 of 2002 by one Kuppusamy husband of D1 and father of the other parties. The said Kuppusamy died on 27.10.2009. Subsequently, the plaintiff filed the suit on 21.11.2013 but after he released his $\frac{1}{8}$ th share. Thus, four shares were given to the petitioner herein and he is entitled for his one share in toto $\frac{5}{8}$ th share. Since, the petitioner's brother one Vilvamuthry died as early as on 02.02.2022, his wife and children executed Release Deed on 11.01.2018. So $\frac{6}{8}$ th shares have been given to the petitioner/K.Gnansekaran. The seventh defendant who is the sister of the



petitioner herein, executed Release Deed in his favour on 19.07.2018

entitling him $\frac{7}{8}$ th share. Thus, the panchayat by elders, he agreed not to precipitate the suit. Thereafter, remaining $\frac{1}{8}$ th share is belonging to the contesting respondent, namely K.Vijayalakmi. According to the petitioner, it cannot be $\frac{1}{7}$ th share, it is only by $\frac{1}{8}$ th share as already when the mother was alive she has already released her share in the suit property, which was not known to the contesting first respondent. However, the first respondent submits that she is entitled for $\frac{1}{8}$ th share. The petitioner herein submits that he is entitled for entire house as he takes a plea that the said sister namely first respondent has already been given enough money in lieu of her share, but it was not accepted by the said contesting first respondent herein. She says that she is entitled for $\frac{1}{8}$ th share. She, being one of the legal heirs, which has not been denied.

4. This Civil Revision Petition is filed against the order of appointing the Advocate Commissioner to inspect the suit property and divide the same into seven equal parts. The application to set aside the ex parte preliminary decree was pending and no opportunity of hearing was granted. It is seen that the suit was filed for partition and allotment of $\frac{1}{8}$ th share to the plaintiff in the suit schedule property. The contesting respondent was not aware of the



fact that the execution of release of her mother's share in favour of the second defendant. Preliminary decree was belatedly challenged. The Court was inclined to allow the application on the ground that the second defendant was entitled for share in the property i.e., 1/8th share and appointed Advocate Commissioner.

5. In this Civil Revision Petition, it is contended that the first respondent/second Defendant has no right to claim the share as it was filed seven years belatedly from the date of passing of preliminary decree.

6. It is to be seen that the first respondent/petitioner in I.A.No.2 of 2019, as a daughter entitled to receive the share of the father's property. Even assuming that the petitioner has not appeared before the Court and contested the case, the Court has to decide the matter on merits and allot such share to the person, who has not appeared before the Court through counsel also. The share has to be divided accordingly, and the Trial Court was right in appointing an Advocate Commissioner to proceed further and divide the said property into 1/8th share allotted to the said second defendant, as already the petitioner herein is holding 7/8th share. If it is not divisible,

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then it is for the Court to decide about the same and what is the market value of the property that has to be decided and accordingly the petitioner has to pay the amount and purchase the same. The first respondent herein has 1/8th share in the property. It is to be stated that Police protection has to be given, as it is clear that unnecessary parties shall create drama while Advocate Commissioner inspects the property.

7. With the above observations, this Civil Revision Petition is disposed of.

24.07.2023

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Index: Yes/No

Speaking Order: Yes/No

To

The VII Assistant City Civil Court,
Chennai.

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