



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 11.04.2023	Orders Pronounced on 22.12.2023
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THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.P.Nos.12272 & 12278 of 2022
in A.S.No.127 of 2004

M.Lakshmana Kumar

..Petitioner in both C.M.Ps.

Vs.

1.C.Shanthi
2.C.Gomathi
M.Chellammal (deceased)
3.M.Krishnamoorthy
4.M.Kannan
5.M.Rangammal
6.Pommie @ Kasthuri
Devi (deceased)
7.Samraj @ Subramani

..Respondents in both C.M.Ps.

Prayer in 12272 of 2022: Civil Miscellaneous Petition filed under Order XX Rule 18 and Section 151 of Code of Civil Procedure, to modify the Preliminary Decree dated 09.06.2015 passed in the above A.S.No.127 of 2004 by striking off the Clause (iii) and Clause (iv) of the Preliminary Decree as Mrs.Chellammal (deceased) had already alienated her share in the properties.



Prayer in 12272 of 2022: Civil Miscellaneous Petition filed under Section 151 of Code of Civil Procedure, to stay of all further proceedings in the Final Decree petition in I.A.No.81 of 2016 in O.S.No.7282 of 1999 pending on the file of the XIX Additional City Civil Court at Chennai, Pending disposal of the Modification Petition.

For Petitioner : Mr.T.Sundar Rajan

For Respondents
For R1 & R2 : M/s.C.R.Rukmani

ORDER

C.M.P.No.12278 of 2022 in A.S.No.127 of 2004 has been filed by the Petitioner / Appellant to stay all further proceedings in the final decree petition in I.A.No.81 of 2016 in O.S.No.7282 of 1999, pending on the file of the XIX Additional Judge, City Civil Court, Chennai, pending disposal of the modification petition in C.M.P.No.12272 of 2022.

2. The Petitioner in C.M.P.Nos.12272 & 12278 of 2022 in A.S.No.127 of 2004 is the 4th Defendant in the suit in O.S.No.7282 of 1999 and the 4th Appellant in A.S.No.127 of 2004. The said Appeal Suit was disposed of by this Court on 09.06.2015. While disposing of the appeal, the learned Judge of this Court had granted decree of 1/8th share to each of the sharers as legal



heirs of Chandrababu Naidu. On the death of the 1st Defendant in the suit, the share of the 2nd Plaintiff alone got enhanced to 9/112 of the total share, making the total share of the Plaintiffs 1 and 2 to 1/7th share and directed division of suit property into seven (07) equal shares and allotment of one such share jointly to the Plaintiffs 1 and 2. The decision regarding mesne profits is relegated to a separate proceeding under Order XX, Rule 12 of CPC. Costs of the Plaint shall be paid by the Defendants.

3. Subsequent to the disposal of the appeal only, the Appellant / 4th Defendant came to know that the 1st Defendant M.Chellammal had sold her share of the property during her lifetime. It was not known to the Appellants while agitating the appeal and they had come to know about the same only subsequent to the disposal of the appeal. Therefore, they had filed this Civil Miscellaneous Petition seeking to modify the decree granted in A.S.No.127 of 2004, viz., instead of 1/7th share to the Plaintiffs 1 and 2, who are the legal heirs of the deceased 1st Defendant, each of the sharers shall be granted only 1/8th share. Therefore, he seeks to modify the preliminary decree dated 09.06.2015 passed in A.S.No.127 of 2004 to the extent by striking off Clauses 3 and 4 of the decree, as M/s.M.Chellammal alienated her share in



the properties.

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4. The learned counsel for the respondents objected to the petition filed by the 4th Defendant in O.S.No.7282 of 1999, who is the 4th Appellant in A.S.No.127 of 2004. The objection by the Plaintiffs in O.S.No.7282 of 1999 to the petition filed by the 4th Defendant in C.M.P.No.12272 & 12278 of 2022 is that the 4th Appellant had not filed the said document before disposal of the appeal by the learned Judge of this Court and he had filed this petition only subsequent to the grant of preliminary decree by this Court. The alienation by M/s.M.Chellammal, the 1st Defendant in the suit in favour of the third party was not acted upon. Therefore, the decree in appeal by the Appellate Court does not warrant any interference or modification.

5. The observations of the Hon'ble High Court in A.S.No.127 of 2004 that the Plaintiffs are entitled to 1/7th share holds good. Therefore, the Petitioner is attempting to re-open the issues. Hence, this C.M.P has no merits and it is to be dismissed.



6. The learned counsel for the Petitioner relied on the ruling reported in ***CDJ 2016 MHC 7193 in C.R.P.No.966 of 2014 in the case of Alagammal & Others Vs. Minor Manikandan***, particularly to Paragraph Nos. 5, 8, 11 and 12. The learned counsel for the Petitioner also invited the attention to this Court in Page No.159 of the typed set in Clause iii and Clause iv, which reads as follows;-

“ iii) That on the death of M.Chellammal, deceased first appellant herein / the first defendant, the share of the 2nd respondent / 2nd plaintiff alone got enhanced to 9/112 making the total share of the 1st and 2nd respondent herein / plaintiff 1 and 2 to 1/7th share.

iv) That the schedule mentioned property be divided into 7 equal shares and the respondents 1 and 2 herein / plaintiffs 1 and 2 be allotted to 1/6th share jointly.”

7. The ruling cited by the learned counsel for the Petitioner in ***CDJ 2016 MHC 7193 in C.R.P.No.966 of 2014 in the case of Alagammal & Others Vs. Minor Manikandan*** will not hold good as it is a case where there was compromise. The Plaintiffs share was not touched. The Petitioner filed petition seeking modification, which is between the Defendants. Therefore,



the learned counsel for the Respondent prayed this Court to dismiss this petition as having no merits and it is only an attempt to drag on the proceedings in the final decree application. The petitioner is seeking to re-open the issues after disposal of the appeal.

8. In the light of the reported ruling, the objection of the learned counsel for the Respondent stating that the reported ruling is not applicable to the facts of this case. In the reported ruling, the facts are different. After passing of the preliminary decree by the Trial Court, there had been a compromise between the Defendants whereby one of the Defendant in the suit had released his share in favour of the other Defendant. Therefore, the Defendant in the suit gets 4/5th share whereas the Plaintiffs together get 1/5th share. Here, the appeal had been disposed of by the High Court. During the pendency of the appeal, the 4th Appellant / 4th Defendant had not produced any Deed by which the 1st Defendant had alienated her property to the 4th Defendant. When he had suppressed those documents during the hearing of the appeal, he cannot seek modification of the decree behind the back of the other sharers in this property.



9. The objection by the Plaintiffs, who are the Respondents herein, is justified in the light of the circumstances that the 4th Appellant, who was the party to the appeal, had not brought it to the knowledge of the Court before ever the appeal was disposed of.

10. In the result, C.M.P.No.12272 of 2022 in A.S.No.127 of 2004 seeking modification of the preliminary decree is rejected and the same is dismissed. C.M.P.No.12278 of 2022 in A.S.No. 127 of 2004 for stay is also dismissed.

22.12.2023

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SATHI KUMAR SUKUMARA KURUP., J.

ata/srm

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in A.S.No.127 of 2004

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