



CRP No.2902 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.2902 of 2022
and
C.M.P.No.15744 of 2022

1. Meenakshi Ananda
2.Selvakumaran
Ramakrishnan (Died)

... Petitioners

Versus

1.Srinivasse
2.Kannamani

...Respondents

Civil Revision Petition filed Under Section 115 of Code of Civil Procedure, praying to set aside the order dated 03.06.2022 passed in I.A.No.282 of 2022 in I.A.No.1454 of 2003 in O.S.No.173 of 1998 on the file of the Principal Subordinate Court, Puducherry.

For Petitioner	:	Mr. V.Anthony Elangovan Raj for Mr.R.Ramachandran
For R1	:	M/s. Manoj Sreevalsan
For R2	:	No appearance



CRP No.2902 of 2022

ORDER

WEB COPY The petitioner has filed this revision petition to set aside the order dated 03.06.2022 passed in I.A.No.282 of 2022 in I.A.No.1454 of 2003 in O.S.No.173 of 1998 on the file of the Principal Subordinate Court, Puducherry.

2. Heard, Mr. V.Anthony Elangovan Raj, learned counsel for Mr.R.Ramachandran learned counsel appearing for the petitioner and M/s. Manoj Sreevalsan, learned counsel appearing for the first respondent and perused the materials available on record.

3. The learned counsel for the revision petitioner submitted that the revision petitioners herein are the plaintiffs in the suit in O.S.No.173 of 1998, for the relief of partition and separate possession of plaintiffs' 2/3 share in item No.1 and 2 of plaint B schedule property. Accordingly, partition suit was decreed. The plaintiffs are entitled for partition and separate possession of 2/3 share in item No.1 & 2 of suit B schedule property and the defendants 1 & 2 are entitled for partition and separate possession of 1/3 rd in item No.1 & 2 of suit B schedule property. After the said decree, the 3rd plaintiff died and the plaintiffs 1 & 2 have executed the settlement deed on two occasions in their



favour, on 29.08.2002 and 02.07.2014 respectively. But, after the death of the 3rd plaintiff, the defendants who are the legal heirs of another brother filed an application to amend the share in final decree application in I.A.No.1454 of 2003, while amending the share of the preliminary decree. Subsequently, the defendants 1 & 2 filed an I.A.No.282 of 2022 in I.A.No.1454 of 2003 in O.S.No.173 of 1998, under Order VI rule 17 r/w Section 151 of CPC for amending the I.A.No.1454 of 2003 in the suit for their share in the 1st and 2nd item of the B schedule property morefully described in the plaint as well as in the preliminary decree instead of 1/3rd share.

4. The learned counsel for the plaintiffs 1 & 2 submits that, during the life time of the 3rd plaintiff, he settled his 1/3rd share property in their favour. Since, he was a blind man, all these years they took care of his elder brother / Ananda Narayanan. Admittedly, plaintiffs 1 and 2 are the legal heirs of Ananda narayanan. Hence, they raised objection to amend the share. However, the defendants 1 & 2 disputed the settlement deed and also contended that 3rd plaintiff died intestate without legal heirs, thereby, in the 1/3rd share they are also having 1/2th share.

5. Considering both sides submissions, the learned trial Judge held that



CRP No.2902 of 2022

on the death of 3rd plaintiff, the defendants 1 and 2 also entitled for $\frac{1}{2}$ share, for which the amendment is necessary. Accordingly, application was allowed.

Challenging the said impugned order the plaintiffs have preferred this revision petition.

6. The learned counsel for the revision petitioners submitted that the deceased/ Rama krishnan / 3rd plaintiff executed a settlement deed infavour of the 2nd plaintiff / 2nd petitioner herein on 12.09.2002. As per the settlement deed the 3rd plaintiff's share entirely belongs to second petitioner. But the learned trial Judge erroneously concluded the said issue and it is liable to be set aside.

7. The learned counsel for the respondents 1 and 2 raised objection, stating that the 3rd plaintiff was a blind man, thereby the plaintiffs 1 & 2 manipulated the document and executed the settlement deed in their favour and he also disputed the genuineness of the document.

8. By way of reply, the learned counsel for the revision petitioners submitted that if the defendants disputed the said settlement deeds they ought to have file a separate suit to get their claim and not in the present suit.



CRP No.2902 of 2022

WEB COPY 9. On considering both side submissions, as well as on a perusal of the records, it is seen that the preliminary decree has been passed in the partition suit, and final decree proceedings are pending. During the final decree proceedings, one of the plaintiffs died. The plaintiffs 1 and 2 executed the said 1/3 rd share of the deceased through settlement deed. But the defendants 1 & 2 denied the validity of the settlement deed, and till date, the suit proceeding have not come an end. Admittedly, final decree proceedings are pending. But the learned trial Judge ought to have given an opportunity to the parties to prove their case, and instead of that, he allowed the said application and directed for amendment of the share.

10. As discussed above, there was a settlement deed said to be executed by one of the plaintiff's for 1/3 rd share and the same is to be proved, and without which that the shares can not be amended. Therefore, the findings of the learned trial Judge is liable to be set aside.

11. The trial learned trial judge is directed to frame issues, in this regard and also as to the genuineness of the settlement deed. Both the parties



CRP No.2902 of 2022

are directed to adduce oral and documentary evidence before the trial Court.

The learned trial Judge is directed to dispose of the case on merits, afresh by considering the evidence on record. The learned trial Judge is also directed to give the findings with regard to the settlement deed, which was executed by the 3rd plaintiff after passing the preliminary decree on merits and thereafter, with regard to amendment of the shares.

12. Accordingly, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs. However, the learned trial judge is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order.

03.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

rr

To

1. The Principal Subordinate Judge,

<https://www.mhc.tn.gov.in/judis>



CRP No.2902 of 2022

Puducherry.

WEB C

2.The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMILSELVI, J.



WEB COPY



CRP No.2902 of 2022

rri

Civil Revision Petition No.2902 of 2022
and
C.M.P.No.15744 of 2022

03.10.2023