



C.R.P. No.3634 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.3634 of 2019

and

C.M.P.No.23852 of 2019

1. Kuppusamy,
S/o.Muthu Gounder

2. Murugesan,
S/o.Kuppusamy

3. Nallusamy @ Vasu,
S/o.Kuppusamy

.. Petitioners

vs.

P.Sivanantham
S/o. Perumal Gounder

..Respondent

Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 02.02.2019 made in I.A.No.677 of 2014 in O.S.No.08 of 2006 passed by the Additional District Munsif Court, Tiruchengode.

For Petitioners : Mr.N.Vijaya Basker

For Respondent : Mr.R.Marudhachalamoorthy



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ORDER

This Civil Revision Petition arises against an order and decree made in I.A.No.677 of 2014 in O.S.No.08 of 2006 on the file of the Additional District Munsif Court, Tiruchengode.

2. O.S.No.8 of 2006 was filed for partition. In the partition suit, the subject matter of the property is Survey No.95/6 to an extent of 0.07.5 hectares together with all easement rights and also a Well, Vari, Vaikkal situated at S.No.95/5 and also 5 H.P. Electric motor pump with its electric service connection No.138.

3. The Trial Court decreed the suit in part and dismissed the suit insofar as the Well, Vari, Vaikkal and 5 H.P. Electric motor pump with its electric service connection No.138 is concerned.

4. The plaintiff, thereafter filed interlocutory application in I.A.No.677 of 2014 for passing a final decree. In the Final decree application, Advocate Commissioner was appointed and he has also suggested two modes of division.



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5. The learned counsel for the petitioner would point out that, apart from the Well, for which the suit had been dismissed, there is another Well abutting the suit schedule property along with the abutting neighbouring property. He would state that the abutting property also belongs to the defendant. He would submit that, in case the Commissioner's Warrant is not re-issued to note all these aspects, he would be seriously prejudiced.

6. Mr.R.Marudhachalamurthy, learned counsel for the respondent would submit that though the suit having been dismissed, insofar as the Well, Vari, Vaikkal and service connection is concerned, the plaintiff is not entitled to seek any right over the same. He would also point out that the preliminary decree has become final as no appeal had been preferred by either of the party against the same.

7. Heard both sides and considered the submissions and perused the records.



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8. It is not in dispute that O.S.No.08 of 2006 was decreed in part.

The entitlement to Well, Vari, Vaikkal, Service connection and motor pump has been rejected. The decree has already attained finality insofar as S.No.95/5 is concerned. Despite the declaration by the Court, the plaintiff did not claim any right of those items of the property by way of an appeal. If the plaintiff does not have the right over the property, he is not entitled for division of the same in the final decree. The final decree cannot exceed the preliminary decree and it is bound by the same.

9. Insofar as the Well, which is situated on the Western side of the property, it is not a subject matter of the suit. It partly falls in the suit survey number and majority falls outside the same. The remedy for the plaintiff insofar as the Well is concerned is only to present a fresh suit claiming a right of the Well in the said property. The mere fact that the defendant owns property on the Western side of the suit scheduled mentioned property, does not give a right to the plaintiff to seek a right over the same in this suit. Consequently, the order passed by the Trial Court is confirmed.



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Accordingly, this Civil Revision Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

24.08.2023

Index:Yes/No

Neutral Citation:Yes/No

mp

To:

The Additional District Munsif Court,
Tiruchengode.



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V. LAKSHMINARAYANAN, J.

mp

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