



C.R.P.No. 4489 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4489 of 2023

and

C.M.P.No.27007 of 2023

Parameswaran

.. Petitioner

Vs

1.P.Mohanam

Ponnusamy Mudaliar (died)
Neelavathy(Died)

2.Kasiviswanathan
3.P.Arunagiri

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 19.06.2023 made in I.A.No.1 of 2022 in I.A.No.693 of 2012 in O.S.No.463 of 1996 on the file of the Principal District Munsif, Kancheepuram.

For Petitioner : Mr. C. Prabakaran

For respondents : Mr. R. Anbalagan, for R1



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ORDER

This Civil Revision Petition is filed challenging the impugned order passed in I.A.No.1 of 2022 in I.A.No.693 of 2012 in O.S.No.463 of 1996 on the file of Principal District Munsif, Kancheepuram, the third defendant has preferred this revision.

2. Before the trial Court, the plaintiff / first respondent herein filed an application in I.A.No.1 of 2022 praying to dismiss the suit against the second defendant / Neelavathy as no share was allotted to her since she died during the pendency of the proceeding and also praying to direct the Advocate Commissioner to execute the warrant assigned to him in I.A.No.693 of 2012. That application was contested by the contesting defendants stating that Neelavathy got right over the property as per the settlement deed executed by the Ponnusamy Mudaliar. Thereafter, she executed a Will on 29.10.1994 bequeathing her share in favour of her sons namely fourth respondent and another brother. After her demise, the Will came into effect. Thereby, the beneficiaries are entitled the property as per the Will. Suppressing the execution of the Will, now the third defendant is



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claiming right but as per the trial Court finding, the plaintiff right over the property was confirmed and no share was allotted to Neelavathy.

Accordingly, as per the preliminary decree, plaintiff, D3, D4 and D5 who are the sons of the first defendant was allotted share in the properties. No share was allotted to Ponnusamy Mudaliyar and Neelavathi, who are the husband and wife. In the second appeal, the decree passed in favour of the plaintiff was confirmed in S.A.No.3 of 2003, the said second appeal was filed by Neelavathi was dismissed. Therefore, as on date, the decree passed in the suit is confirmed and accordingly, Neelavathi was not allotted with any share, during the pendency, she died. Therefore, the plaintiff filed application to proceed with the final decree proceeding without taking steps to implead the legal heirs of the deceased Neelavathi. That application was allowed by the trial Judge on considering the appeal proceeding.

3. Now the learned counsel who is appearing for the first respondent submits that legal heirs of the three more daughters of the Neelavathi is to be added as legal heirs but on considering the entire facts, the suit was filed in the year 1996 by the plaintiff against father, mother and



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brother and after completion of full trial, the trial Judge allotted share to plaintiff and other three sons of the first defendant. No share was allotted to D2 nor her claim of settlement also not been accepted. Therefore, as per the findings of the trial Court, Neelavathi has no right in the property and the same was confirmed in the second appeal. Therefore, there is no need to implead the other legal heirs of the deceased Neelavathi, which was rightly held by the trial Judge, which needs no interference.

4. In the result, the Civil Revision Petition is dismissed as no merits. No costs. Consequently, connected miscellaneous petition is closed.

07.12.2023

Index :Yes/No
Neutral Citation :Yes/No
AT

To
The Principal District Munsif, Kancheepuram.



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T.V.THAMILSELVI, J.

AT

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