



WEB COPY



C.R.P. Nos.4180 & 4181 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.4180 of 2022 and 4181 of 2022

M.R.Gurumoorthy

... Petitioner in both CRPs

Vs

1.M.R.Nandagopal

2.Abhisheka Kattalai

... Respondents in both CRPs

PRAYER in C.R.P.No.4180 of 2022 : Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the common fair and decreetal order dated 22.08.2022 passed in E.P.No.82 of 2020 in O.S.No.24 of 2019 on the file of the Principal District Judge, Thiruvarur.

PRAYER in C.R.P.No.4181 of 2022 : Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the common fair and decreetal order dated 22.08.2022 passed in E.A.No.98 of 2021 in E.P.No.82 of 2020 in O.S.No.24 of 2019 on the file of the Principal District Judge, Thiruvarur.



WEB COPY



C.R.P. Nos.4180 & 4181 of 2022

For Petitioner : Mr.T.S.Baskaran
For Respondent :
For R1 : Mr.M.S.Seshadri
For R2 : Mr.A.R.Nixon

ORDER

The petitioner has prayed to set aside the common fair and decretal order dated 22.08.2022, passed in E.A.No.98 of 2021 in E.P.No.82 of 2020 in O.S.No.24 of 2019 by the learned Principal District Judge, Thiruvarur.

2. The learned counsel for the petitioner submitted that the petitioner/decree holder filed a suit in O.S.No.24 of 2019, under Order VII Rule 1 of CPC for partition of 50% of the share mentioned in the Suit Schedule property, consisting of land measuring 9160 sq.ft. along with the building situated at Door No.7B & 7C, V.R.Mudaliar Street, Vijayapuram, Tiruvarur-610 001, (shop) 27400 Sq.Ft. (Approx) bearing T.S.No.732, Block Bo.20, Ward No.3, Vijayapuram Village, Thiruvarur Taluk, Thiruvarur District and Sub-Registration District at Thiruvarur. O.S.No.24 of 2019 against the 2nd defendant was not pressed. O.S.24 of 2019 was



C.R.P. Nos.4180 & 4181 of 2022

heard along with other two suits in O.S.Nos.22 of 2019 & 23 of 2019, which have been filed for dissolution of partnership firm from Mura Readymades and M.R.Sons respectively on the file of the Principal District Court, Thiruvavarur. on the basis of the Joint Memo of Compromise between the parties before the Lok Adalat on 12.12.2019. All the suits were decreed in terms thereof on the basis of the joint memo of compromise filed by the parties before the Lok Adalat.

3. The first respondent herein is the brother of the revision petitioner / plaintiff. After filing of the three suits, they have entered into compromise, and at the insistence of the family members, compromise was arrived at between the parties. In terms of compromise, all the three suits were decreed as stated above.

4. Thereafter, as per the terms of compromise memo, both the parties followed the compromise. If the defendants fail to comply with the compromise, default clause was also stated in the compromise to the effect that, if the defendants fail to pay a sum of Rs.6.5 crores as mentioned in



C.R.P. Nos.4180 & 4181 of 2022

terms of compromise to the plaintiff on or before 06.05.2020, the three suits shall stand automatically decreed in terms as stated in the Joint Memo of Compromise.

5. Now, in O.S.No.24 of 2019, i.e, Partition suit filed by the plaintiff, the first defendant has failed to comply with the terms of the compromise. The plaintiff filed an execution application in E.P.No.82 of 2020 in O.S.No.24 of 2019, under Order 21, Rule 11(2) of CPC, before the learned Principal District Judge, Thiruvarur, to execute the decree as per the terms of Compromise Memo, more particularly with default clause stated therein. In the said application, notice has been served and the 1st defendant also appeared and filed objections before the Executing Court, stating that even assuming that there is default in the terms of Compromise Memo before the Lok Adalat, the compromise decree is only a preliminary decree, and the plaintiff ought to have taken steps to pass final decree by filing applications. Instead of that, executing the decree as such, is not maintainable and it is also contrary to the terms of compromise decree.



C.R.P. Nos.4180 & 4181 of 2022

6. Further, the plaintiff also filed E.A.No.98 of 2021 praying to appoint an Advocate Commissioner to divide the Eastern Side of the Suit property to the petitioner and Western side to the 1st respondent, equally as per the Lok Adalat award and leaving to enjoy the business. That application was also strongly opposed by the defendants stating that the plaintiff ought to have initiated steps for passing final decree to divide the property by metes and bounds with the help of the Commissioner and not through execution proceedings.

7. To support contentions, the learned counsel for the first respondent/D1 relied on the following authorities, of the Supreme Court:-

(i) **(2008) 8 SCC 198, *Bikoba Deora Gaikward and ors v. Hirabai***

Marutirao, in which it is held as follows:

"9..... A decree therefore may denote final adjudication between the parties and against which an appeal lies, but only when a suit is completely disposed of, thereby a final decree would come into being.

16. Article 136 would apply when an application for execution of any decree other than a decree granting a



mandatory injunction) or order of any civil court is to be filed. An application for taking steps towards passing a final decree is not an execution application. The said provision, therefore, cannot have any application in respect thereof.

17...

8. It has been seen that after passing of preliminary decree for partition, the decree cannot be made effective without a final decree. The final decree made in favour of the first respondent is only partial to the extent of his 1/6th right without any demarcation or division of the properties. Until the rights in the final decree proceedings are worked out qua all and till a final decree in that behalf is made, there is no formal expression of the adjudication conclusively determining the rights of the parties with regard to the properties for partition in terms of the declaration of 1/6th and 5/6th share of the first respondent and the appellants so as to entitle the party to make an application for execution of the final decree.

*18. Recently, albeit on a different factual backdrop, this Court in **Hasham Abbas Sayyad v. Usman Abbas Sayyad** opined: (SCC p.360, para9)*

9. A final decree proceeding may be initiated at any point of time. No limitation is provided therefor. However,



C.R.P. Nos.4180 & 4181 of 2022

what can be executed is a final decree, and not a preliminary decree, unless and until final decree is a part of the preliminary decree. "

(ii) (2009) 9 SCC 689, Shub Karan Bubna vs Sita Saran Bubna,

in which it is held as follows:

"18.

18.2. In regard to immovable properties (other than agricultural lands paying land revenue), that is, building, plots, ect. or movable properties:

(i) where the Court can conveniently and without further enquiry make the division without the assistance of any Commissioner, or where parties agree upon the manner of division, the Court will pass a single decree comprising the Preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds.

(ii)

The function of making a partition or separation according to the rights declared by the preliminary decree 9in regard to non-agricultural immovable properties and movables) is entrusted to a Commissioner, as it involves inspection of the property and examination of various



C.R.P. Nos.4180 & 4181 of 2022

WEB COPY

alternatives with reference to practical utility and site conditions. When the Commissioner gives his report as to the manner of division, the proposals contained in the report are considered by the Court; and after hearing objections to the report, if any, the Court passes a final decree whereby the relief sought in the suit is granted by separating the property by metes and bounds. It is also possible that if the property is incapable of proper division, the Court may direct sale thereof and distribution of the proceeds as per the shares declared.

20. On the other hand, in a partition suit the preliminary decrees only decide a part of the suit and therefore an application for passing a final decree is only an application in a pending suit, seeking further progress. In partition suits, there can be merely a single decree with certain further steps to be taken by the Court. In fact, several applications for final decree are permissible in a partition suit. A decree in a partition suit ensures to the benefit of all the co-owners and therefore, it is sometimes said that there is really no judgment-debtor in a partition decree."

22. Therefore, the concept of final decree in a partition suit is different from the concept of final decree in a mortgage suit. Consequently an application for a final



C.R.P. Nos.4180 & 4181 of 2022

WEB COPY

decree in a mortgage suit is different from an application for final decree in partition suits."

8. Relying the ration laid down in the above referred authorities, the learned counsel for the respondents argues that, though the Lok Adalat Judgment was made in the presence of the parties, it is only a preliminary decree, in respect of O.S.No.24 of 2019 and the share of 50% alone was mentioned in the terms of Compromise and the Lok Adalat decree is only a preliminary decree and the plaintiff is bound to execute the final decree, and execution application as such is not maintainable and the same was rightly dismissed by the Executing Court, which needs no interference by this Court.

9. By way of reply, the learned counsel for the decree-holder submitted that compromise was entered between the parties, as per the Compromise Memo filed before the Lok Adalat on 12.12.2019, the terms were arrived at to settle the dispute between the parties, with default clause. As per the terms of compromise memo, by 06.05.2020, the defendants have



C.R.P. Nos.4180 & 4181 of 2022

to pay a sum of Rs.6.5 Crores, to the plaintiff, failing which, default clause will have to be implemented. With regard to the suit, in O.S.No.24 of 2019, the claim of Eastern portion 50% share in the Suit property was already allotted as per terms of compromise. Therefore, the plaintiff's share was already declared, a specific portion of the property also allotted in the said compromise, as such is the final decree. So, the EA filed by the plaintiff to appoint Advocate Commissioner for demarcation of his share in order to take possession as such is maintainable under law, but the learned trial Judge erroneously dismissed the same, against which CRP.No.4181 of 2022 is filed by the plaintiff.

10. However considering both submissions, the Executing Court finally held that, as per the terms of Compromise Memo, the parties concerned bound to obey. In the above case, only preliminary decree was passed, and the default clause also establishes the said fact. Therefore, it cannot be treated as final decree, and so, the petition is filed by the decree-holder to appoint the Commissioner to execute the proceedings and as such, E.A.No.82 of 2020 was dismissed with liberty to the petitioner to initiate



C.R.P. Nos.4180 & 4181 of 2022

proceedings for passing final decree as per law. By challenging the said proceedings, the decree holder had filed C.R.P.No.4180 of 2022.

11. On considering both submissions the fact reveals that as per the terms of Compromise Memo, the decree was passed. The defendants in all the suits agreed to pay a sum of Rs.6.5 Crores towards full and final settlement of all the claims of the plaintiffs in all the three suits within a specific period of time. Hence, the plaintiff filed a Joint Memo of Compromise with default clause, which reads as follows:

“1. That the plaintiff is allotted the eastern 50% share in the suit property in which he is already in possession.

2. That the parties agree to appoint a surveyor to measure and fix the boundaries of their respective shares subject to the default clauses in the suits in O.S.No.22 and 23 of 2019.

3. That the plaintiff and defendants shall approach the temple authorities for transferring the lease of the vacant site in their respective names in regard to the portions allotted to them.

4. That the parties agree to raise a wall dividing their



C.R.P. Nos.4180 & 4181 of 2022

as agreed.

WEB COPY

5. *That the both parties are entitled to put up any construction or additions to his portion allotted and both the parties shall not cause any disturbance to the to the enjoyment of the other party's share.*

6. *Both the parties shall obtain separate property tax assessment in their name for which both the parties shall sign necessary documents to complete the above tasks.*

7. *The parties agrees to enjoy the various amenities in the building that falls in the respective portions only. The parties futher agree to get fresh amenities not available in their portions at their own cost.”*

12. Coming to the specific terms with regard to O.S.No.24 of 2019, originally, the suit was filed by the plaintiff claiming 50% of the share in the suit property. Now, as per the terms of compromise, plaintiff was allotted Eastern 50% share in the suit property, in which he has already been in possession. The second clause of the terms of compromise stated that the parties agreed to appoint a Surveyor to measure and fix the boundaries of their respective shares, subject to the default clause in the suit.



C.R.P. Nos.4180 & 4181 of 2022

13. Therefore, now as per the terms of compromise plaintiff / revision petitioner filed an application to appoint Surveyor to measure and fix the boundaries of their respective shares. Moreover in the 1st term of compromise decree specifically mentioned about the portion of the property which is to be allotted, to each of the parties to compromise. So, the said compromise decree clearly declares right and shares of the parties interest in the said property, indeed a specific portion of the share was allotted, more particularly, the Eastern portion 50% to the plaintiff and as such is final decree and not a preliminary decree. The authorities relied by the respondent /D1, not apply facts of this case. Therefore, the application filed by the petitioner as such it is maintainable. But the Court below failed to appreciate said legal proposition and dismissed the applications as such is totally misconception of law. Hence, the findings of the Court below is hereby set aside. The application filed by the revision petitioner to appoint Commissioner to demark the boundaries through Surveyor in order to take possession of the property as such is maintainable in law.

14. Hence, for the reasons stated above, the findings of the Executing



C.R.P. Nos.4180 & 4181 of 2022

Court in E.P.No.82 of 2020 in O.S.No.24 of 2019 alone and in E.A.No.98

of 2021 in E.P.No.82 of 2020 in O.S.No.24 of 2019, are set aside. The

learned Principal District Judge, Thiruvarur, is directed to dispose of the

cases within a period of three months from the date of receipt of a copy of

this order. Accordingly, the Civil Revision Petitions are allowed.

Consequently, connected Miscellaneous petitions are closed. There shall be

no order as to costs.

24.03.2023

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order

rri

To

1.The Principal District Judge,
Thiruvarur.

14\16



C.R.P. Nos.4180 & 4181 of 2022

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

T.V.THAMILSELVI, J.

rri

C.R.P.Nos.4180 of 2022 and 4181 of 2022



WEB COPY



C.R.P. Nos.4180 & 4181 of 2022

24.03.2023