



C.R.P.(NPD)No.3826 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.3826 of 2019
and C.M.P.No.25230 of 2019

Sangupathiammal

.. Petitioner

Vs.

1. Ezhumalai
2. Krishnan @ Premkumar
3. Satishkumar
4. Rajiv Gandhi
5. Suganthi

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 09.07.2019 in I.A.No.50 of 2018 in I.A.No.541 of 2015 in O.S.No.787 of 2006 on the file of the II Additional District Munsif Court, Salem.

For Petitioner : Mr. V.Sekar

For Respondents : Mr. P.Jagadeesan



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ORDER

Heard the learned counsel for the petitioner as well as the learned counsel for the respondents. I have carefully perused the records.

2. The civil revision petitioner Sangupathiammal is the plaintiff in O.S.No.787 of 2006 on the file of II Additional District Munsif Court at Salem. The 1st respondent/Ezhumalai, is the 1st defendant in the said suit, who is her brother. The petitioner succeeded in the suit and a preliminary decree was passed on 29.11.2013. Subsequently, she did not take any steps for passing of final decree. Therefore, the 1st respondent took out an application for passing of final decree.

3. In the final decree application, an Advocate Commissioner was appointed, who visited the suit property on two dates namely, 12.09.2015 and 13.02.2016. On both these dates, the plaintiff participated in the Commissioner's visit. According to her, she met the defendants and enquired as to what are these proceedings.



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4. A perusal of an affidavit filed in support of the condone delay application shows that the petitioner is an unlettered and illiterate person and therefore, she had approached her brother/1st defendant to understand about the visit of the Advocate Commissioner. The affidavit specifically states that the 1st defendant/brother had assured her that there is nothing to be worried about this and that these are all formal but necessary Court proceedings.

5. On the strength of the Commissioner's report, a final decree came to be passed. The petitioner stated that only on receipt of the delivery notice in the E.P. on 24.10.2017, she came to be aware that a final decree had been passed in I.A.No.541 of 2015, dated 09.12.2016. Therefore, she filed an application to set aside the exparte final decree petition in November 2017.

6. Be that as it may, the fact that the petitioner relied upon the 1st defendant had been specifically pleaded. In the detailed counter filed by



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the 1st defendant, nowhere this factum has been denied. A fact, which has not been denied, is deemed to be admitted. Under these circumstances, the factum that an unlettered and illiterate lady placed reliance upon her brother becomes very clear. The total difference in allotment is about five cents of the property. The plaintiff claims that she wants some more lands with the lands appurtenant to the building in S.No.61/14.

7. Having placed reliance upon her brother, who has got a final decree in his favour, I feel, an opportunity can be granted to the petitioner to argue on the final decree application. The Advocate Commissioner's report shall remain intact subject to the objections to be filed by the plaintiff/petitioner. To make it clear, the petitioner/plaintiff will be entitled to file her objections to the mode of division suggested in. The trial Court is requested to revisit the passing of the final decree.

8. I am aware that some hardship has been caused to the 1st defendant on account of the delay that has occasioned in filing an



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application to set aside the exparte final decree. Considering the relationship between the petitioner and the 1st respondent and also the fact that the hardship has been caused to the 1st respondent, I am inclined to impose heavy conditions.

9. The Civil Revision Petition is allowed on the following terms:

(i) The civil revision petitioner/Sangupathiammal pays a sum of Rs.25,000/- (Rupees Twenty five thousand only) to the 1st defendant/Ezhumalai, within a period of four weeks from today i.e., on or before 11.09.2023.

(ii) On payment of costs, the learned II Additional District Munsif at Salem, is requested to take up an application filed under Order IX Rule 13 of C.P.C., allow the same and put the parties back to the stage on which the Advocate Commissioner had submitted a report.

(iii) The Court need not revisit the proceedings, which have taken place, prior to the submission of the Advocate Commissioner's report.



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(iv) The learned II Additional District Munsif at Salem, is requested to complete the exercise on hearing the final decree application on or before 31.12.2023.

(v) If the costs imposed by this Court is not paid by the petitioner, this Civil Revision Petition will stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.08.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To
II Additional District Munsif, Salem.



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V.LAKSHMINARAYANAN,J.

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