



C.R.P.(MD).Nos.2097 of 2011 and 77 of 2012

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DATED: 07.09.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.2097 of 2011 and 77 of 2012

and

MP(MD).No.1 of 2012

CRP(MD).No.2097 of 2011

1.Santhakumari

2.Sheela

....Petitioners

-VS-

1.Thankaraj (died)

2.Chellammal

3.Rajamony (died)

4.Leelavathi

5.Jayakumar

6.Larsan

7.Kamalan

8.George

9.Rosammal (died)

10.Kannadasan

11.Senthilkumar

12.Ganesh

13.Thankaleela

14.Amirthabai



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15.Stella

16.Shyla

17.Leela

18.Isravel

19.Kumaradhas

20.Gnanadas

21.Wilson

22.Mary Suseela

23.Rojarbinni

24.Anisha

25.P.Swarnam

26.T.Stella Mary

27.T.Shyamal Mary

28.T.John Kingston

... Respondents

(Memo dated 20.11.2019 is recorded as R3 died, petitioners and 2nd respondent who are already on record are recorded as legal heirs of the deceased 3rd respondent)

(Memo dated 20.11.2019 is recorded as R9 died and respondents 10 to 17 who are already on record are recorded as legal heirs of the deceased 9th respondent vide Court order dated 21.07.2023)

(Respondents 25 to 28 are brought on record as legal heirs of the deceased 1st respondent vide Court order dated 28.11.2019)

CRP(MD).No.77 of 2012

Chellammal

....Petitioner

Vs.

2/11



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- 1.Thankaraj (died)
- 2.Leelavathi
- 3.Jayakumar
- 4.Larsan
- 5.Kamalan
- 6.George
- 7.Rosammal (died)
- 8.Kannadhasan
- 9.Senthilkumar
- 10.Ganesh
- 11.Thankaleela
- 12.Amirthabai
- 13.Stella
- 14.Shyla
- 15.Leela
- 16.Isravel
- 17.Kumaradhas
- 18.Gnanadas
- 19.Wilson
- 20.Mary Suseela
- 21.Rojarbinni
- 22.Anisha
- 23.P.Swarnam
- 24.T.Stella Mary



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25.T.Shyamal Mary

26.T.John Kingston

....Respondents

(Memo dated 13.01.2015 is recorded as R7 died and respondents 8 to 15 who are already on record are recorded as legal heirs of the deceased R7)

(Respondents 23 to 26 are brought on record as legal heirs of the deceased first respondent vide Court order dated 28.11.2019)

PRAYER in CRP(MD).No.2097 of 2011: The Civil Revision Petition has been filed under Section 115 of Civil Procedure Court, to set aside the order and decretal order dated 28.03.2011 of the learned II Additional District Munsif, Kuzhithurai made in I.A.No.16 of 2010 in O.S.No.110 of 1990 and allow the said I.A.

PRAYER in CRP(MD).No.77 of 2012: The Civil Revision Petition has been filed under article 227 of Constitution of India, to set aside the order and decretal order dated 28.03.2011 of the learned II Additional District Munsif, Kuzhithural made in I.A.No.49 of 2008 in O.S.No.110 of 1990 and allow the said I.A.

In CRP(MD).No.2097 of 2011

For Petitioners : Mr.K.N.Thampi

For R2, R4, R5, R7
R8, R10 to R21 : No appearance

For R25 to R28 : Mr.B.Brijesh Kishore



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In CRP(MD).No.77 of 2012

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For Petitioners	: Mr.K.N.Thampi
For R2 to R7, R9 to R20	: No appearance
For R21 & R 22	: Mr.B.Brijesh Kishore
For R23 to R26	: Mr.V.Meenakshi Sundaram

COMMON ORDER

These two revisions have been filed challenging the orders passed in I.A.No.49 of 2008 and I.A.No.16 of 2010 in O.S.No.110 of 1990 on the file of the II Additional District Munsif Court, Kuzhithurai.

2.One Thankaraj had filed O.S.No.110 of 1990 on the file of the District Munsif Court, Kuzhithurai for the relief of partition. In the said suit, one Chellammal was arrayed as first defendant. A preliminary decree for partition was passed in the said suit on 31.07.1976. The said Preliminary Decree has attained finality. The decree holder had filed I.A.No.115 of 1999 for passing of final decree.

3.While the final decree application was pending, the first defendant in the suit namely Chellammal had filed I.A.No.33 of 2008 for passing of a supplementary preliminary decree in her favour on the ground that the plaintiff had admitted her share to an extent of 20 cents in the suit schedule



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properties. While the said application was pending, the said Chellammal had executed two settlement deeds in favour of her two daughters on 17.11.2004 and 21.04.2004. In the final decree proceedings, the first defendant namely Chellammal had filed I.A.No.49 of 2008 to receive her objection to the commissioner's report and sketch filed in the final decree proceedings. The daughters of the said Chellammal namely Santhakumari and Sheela had filed I.A.No.16 of 2010 to get themselves impleaded in the final decree proceedings on the strength of two settlement deeds executed by their mother Chellammal.

4.The trial Court had dismissed I.A.No.49 of 2008. Challenging the same, CRP(MD).No.77 of 2012 has been filed. Challenging the dismissal order passed in I.A.No.16 of 2010, CRP(MD).No.2097 of 2011 has been filed.

5.The trial Court had dismissed both the applications on the sole ground that no share has been allotted in favour of the first defendant Chellammal in the trial Court decree. Therefore, she has no right to file an objection to the Commissioner's report in the final decree proceedings. The impleading petition filed by the daughters of the said Chellammal had also been dismissed on the same ground that their mother did not have any title



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to execute those settlement deeds. Challenging these two orders, the present Civil Revision Petitions have been filed.

6. According to the learned counsel appearing for the revision petitioners, the plaintiff Thankaraj in Paragraph No.3 of the plaint has admitted that the first defendant Chellammal had acquired 20 cents of land under a sale deed. When the share of the Chellammal is admitted by the plaintiff, the first defendant is entitled for passing of supplementary preliminary decree in her favour on payment of necessary Court fee. In case, if I.A.No.33 of 2008 stands allowed, then the said Chellammal would be entitled to file her objection to the Commissioner's report and the daughters of the Chellammal would have a right to get themselves impleaded in the final decree proceedings. Until orders are passed in I.A.No.33 of 2008, it cannot be said that Chellammal has no share in the suit schedule properties. Hence, he prayed for allowing both the revisions.

7. Per contra, the learned counsel appearing for the legal heirs of the plaintiff and defendants 6 & 7 had contended that the first defendant Chellammal had remained exparte in the suit and no share was allotted to the said Chellammal in the preliminary decree proceedings. Therefore, she would not have any right to interfere in the final decree proceedings.



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Hence, neither Chellammal nor her daughters would not be entitled to get themselves impleaded in the final decree proceedings.

8.The learned counsels had further contended that the final decree proceedings has been dismissed for default in June 2023 and therefore, these two revision petitions arising out of interim applications in the final decree proceedings do not survive for adjudication.

9.I have considered the submissions made on either side and perused the material records.

10. As rightly contended by the learned counsel appearing for the respondents, since the final decree application has been dismissed for default, both the revision petitions arising out of interim orders in the said final decree proceedings do not survive for adjudication. Therefore, this Court is not passing any order on merits in these revisions. However, it is open to the respective revision petitioners to renew their request before the trial Court depending upon the order to be passed in I.A.No.33 of 2008. In case, I.A.No.33 of 2008 filed by the said Chellammal stands allowed and a supplementary preliminary decree is passed in her favour, the said Chellammal would be entitled to file her objections to the Commissioner's report in the final decree proceedings. The daughters of the Chellammal



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who are said to have derived rights under two settlement deeds, would be entitled to get themselves impleaded in the final decree proceedings.

11. In view of the above said deliberations, the trial Court is directed to dispose of I.A.No.33 of 2008 in O.S.No.110 of 1990 on or before 31.03.2024. In case, if the said application is allowed in favour of Chellammal, without being influenced by this Court, the Chellammal and her daughters would have a right to intervene the final decree proceedings in I.A.No.115 of 1999 to restore or to initiate independent final decree proceedings, if they are so advised.

12. With the above observations, these Civil Revision Petitions stand closed. No costs. Consequently, connected miscellaneous petition is closed

07.09.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

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- 1.The Principal District Munsif, Kuzhithurai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR, J

10/11



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