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C.R.P.No.1380 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1380 of 2020 and
C.M.P.No.8014 of 2020

Sumathi

... Petitioner

Vs.

1.Ganesan
2.Venkatachalam
3.Lakshmiammal
4.Gopal
5.Periyannan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order of the District Munsif Court at Mettur,dated 03.12.2019 in I.A.No.1 of 2019 in I.A.No.196 of 2018 in O.S.No.610 of 1994.

For Petitioner	: M/s.P.Valliappan Senior Counsel Assisted by Mr.M.S.GokulRaj
For Respondent 1 to3	:Mrs.Saraswathi Muthiah for M/s.S.R.Shenbaga Baabu
For respondent 4	: Died
For respondent 5	: No appearance



ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below allowing the petition filed by the respondents 1 to 3 in part by permitting them to lead evidence with regard to the Will dated 08.11.2010 allegedly executed by the deceased 1st defendant and with regard to the sale transactions involving the petitioner.

2. The petitioner herein along with her mother filed a suit for partition against her father Kolandaipaiyan @ Kolandai gounder, one Dasa Gounder (Father of respondents 1 to 3) and one Gopal. In the suit, a preliminary decree for partition was passed in favour of petitioner declaring her 1/4th share. Subsequent to passing of preliminary decree, the father of the petitioner Kolandaipaiyan @ Kolandai gounder died. Therefore, claiming his 1/4th share as his sole heir, the petitioner filed a final decree petition for passing of final decree in respect of her 1/2 share. The said application was opposed by respondents 1 to 3 who are all legal heirs of deceased 2nd defendant Dasa Gounder on the ground that father of the petitioner namely deceased 1st



defendant executed a Will dated 08.11.2010 bequeathing his interest in the property in favour of 1st respondent, Ganesan. It was also averred by the respondents 1 to 3 in their counter that petitioner along with other co-sharers sold the portion of the suit property to third parties. Therefore, the present petition for passing of final decree was not maintainable.

3. Now, the respondents 1 to 3 filed I.A.No.1 of 2019 seeking permission of the Court to lead oral evidence in respect of following three facts alleged by them.

- a) Family arrangement among the parties even prior to filing of the suit.
- b) Sale of portion of the suit property by petitioner and others prior to passing of preliminary decree.
- c) Regarding the Will executed by deceased 1st defendant Kolandaipaiyan @ Kolandai gounder dated 08.11.2010 in favour of 1st respondent, Ganesan.

4. The Court below partly allowed the respondents 1 to 3 to lead evidence in respect of matters mentioned in (b) and (c). The petition was



dismissed in respect of facts mentioned in (a). Aggrieved by the same, the petitioner is before this Court.

5. The learned Senior Counsel appearing for the petitioner submitted that alleged sale transaction involving the petitioner and the family arrangement had taken place prior to passing of final decree. The respondents, who failed to raise those points in the suit prior to passing of preliminary decree are not entitled to raise said point and try to challenge the preliminary decree in final decree proceedings. As far as opportunity to the respondents with regard to the alleged Will executed by deceased 1st defendant dated 08.11.2010, the learned Senior Counsel has no serious objections.

6. The learned counsel for the respondents 1 to 3 submitted that the petitioner herein and other sharers entered into a family arrangement even prior to filing of the suit and in pursuance of the same, the petitioner also sold the portion of the suit property to third parties and therefore, the respondent shall be permitted to lead evidence in respect of those transaction.



7. The preliminary decree in the suit was passed on 28.02.2000. It is settled law that parties are not entitled to challenge the correctness of the preliminary decree in the final decree proceedings. If the respondents want to challenge the correctness of the preliminary decree, either they have to file an appeal or file a petition to set aside the preliminary decree in the manner known to law. Without adopting that course, the respondents are not entitled to lead evidence with regard to the alleged family arrangement and sale involving the petitioner that had taken place prior to passing of the preliminary decree. The point now sought to be raised by the respondents ought to have been raised in the suit even prior to passing of preliminary decree. Having failed to raise the points in the suit prior to passing of preliminary decree, the respondents 1 to 3 are not entitled to raise those facts which had taken place prior to passing of preliminary decree in final decree proceedings.

8. As far as Will allegedly executed by deceased 1st defendant in favour of 1st respondent is concerned, the respondents 1 to 3 are entitled to lead evidence and the Court below, before passing final decree, has to decide whether the Will relied on by the respondents 1 to 3 are genuine or not.



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S.SOUNTHAR, J.

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9. With these observations, the Civil Revision Petition is disposed of.
Consequently, connected miscellaneous petition is closed. No costs.

11.01.2024

Index : Yes / No
Internet : Yes / No
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To

The learned District Munsif Court at Mettur,

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and
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