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C.R.P. No.3025 of 2024 & C.M.P.No.16261 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.08.2024

Delivered on : 25.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. No.3025 of 2024
and
C.M.P. No.16261 of 2024

K.Chellappan

... Petitioner

Versus

1.M.Pancharani

2.M.Kasthuri

3.S.Lakshmi

4.S.Selvi

5.S.Sulochana

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to set aside the fair and decreetal order dated 14.02.2024 passed in I.A.No.1 of 2023 in O.S.No.13 of 2014 on the file of the District and Sessions Court No.II, Kanchipuram.

For Petitioner : Mr.K.Chellappan(Party-in-person)



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ORDER

The revision has been filed against the order passed in I.A.No.1 of 2023 in O.S.No.13 of 2014 dated 14.02.2024 appointing an Advocate Commissioner, based on preliminary decree, to conduct local inspection for partition and to divide the suit properties into metes and bounds.

2. The petitioner is the defendant in O.S.No.13 of 2014 on the file of the District Judge at Kanchipuram. The suit was filed by the respondents herein, who are the siblings of the petitioner, seeking for partition of schedule mentioned property into six equal shares and to pass a final decree by appointing an Advocate Commissioner to divide the suit schedule property by metes and bounds into six equal shares and for costs.

3. The petitioner/defendant and respondents/plaintiffs are the legal heirs of one Kannan and Dhanabakiyam. Their father viz., Kannan passed away on 23.08.1996 and the mother viz., Dhanabakiyam passed away on 15.11.2013 intestate, without executing any Will leaving the respondents/plaintiffs and the petitioner/defendant as their legal heirs. Their



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father had purchased a property measuring 39 cents in Survey No.597/2 in Gerugambakkam Village, Sriperumbudur Taluk and during his lifetime, he had been cultivating the suit land. After the demise of their father, the respondents/plaintiffs and the petitioner/defendant were in joint possession of the same. Since the nearby areas around the suit property had developed, they did not continue with cultivation and the plaintiffs had requested the defendant for partition the suit property. Since he had refused to give their shares and attempted to alienate the suit property, the respondents/plaintiffs filed the suit in O.S. No.13 of 2014.

4. The petitioner/defendant had contested the partition suit contending that the property was purchased in the name of their father, from and out of the income of the petitioner/defendant and that his father had executed a Will in his favour regarding the property.

5. The trial Court, after a full-fledged trial, having disbelieved the petitioner/defendant, passed a preliminary decree on 07.11.2016 to the effect that the respondents/plaintiffs are entitled to 1/7 share each in respect of 0.32 ½ cents out of 0.39 cents and dismissed the suit in respect of



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remaining extent. Challenging the preliminary decree, the petitioner/defendant had filed A.S.No.174 of 2017. This Court, by judgment dated 20.12.2019, dismissed the appeal and confirmed the judgment and decree dated 07.11.2016 made in O.S.No.13 of 2014. After that, the petitioner/defendant filed Review Application No.36 of 2021 in A.S.No.174 of 2017 and this Court, finding that the petitioner/defendant had not established any error apparent on the face of the record to consider the review application, dismissed the review application on 09.09.2021.

6. Subsequently, the petitioner/defendant had filed an Application in C.M.P.SR.No.106297 of 2021 to reopen the Appeal Suit, which was rejected by this court holding that there was no provision to entertain any petition to reopen the appeal suit, upholding the objection raised by the Registry with regard to maintainability of the petition.

7. Based on the preliminary decree passed in O.S. No.13 of 2014, the respondents/plaintiffs had filed I.A.No.1 of 2023 in O.S.No.13 of 2014 before the District and Sessions Court No.II, Kancheepuram under Order 26 Rule 13 and 14 of Civil Procedure Code among other things for the



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appointment of an Advocate Commissioner to inspect and divide the properties by metes and bounds in terms of the preliminary decree dated 07.11.2016 and for filing a report.

8. The petitioner/defendant had filed counter affidavit raising the same averments in the written statement in the suit for partition. It was further contended that, out of his five sisters, his first sister Pancharani got married in 1962, Kathuri in 1966 and Lakshmi in 1969 and a wrong valuation and defective stamp duty was also paid before the trial Court and thereby, loss was caused to the Government. It was also contended that the respondents/plaintiffs, his sisters, on some misunderstanding and dispute among themselves, had filed the suit in O.S.No.13 of 2014 for partition with false allegations and thereby, the preliminary decree could not be executed.

9. The court below, finding that the grounds taken in the counter had already been raised and agitated in the partition suit and that the preliminary decree had not been set aside till date, by an order dated 14.02.2024, appointed an Advocate Commissioner with a direction to file a report as to the feasibility of partitioning the suit property as per the preliminary decree.



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Challenging the said order, the present civil revision petition has been filed.

WEB COPY 10. Mr.K.Chellappan, Party-in-person, has made the following submissions:

1. The trial Court as well as the appellate Court had failed to take into consideration the financial status of the petitioner and the fact that the petitioner had signed as a witness in the document to prove the fact that he had given money for purchasing the schedule mentioned property by his father.
2. The Appellate Court had not allowed his counsel, Mr.K.Balaraman Naidu, to argue the case and the Court had not allowed him to submit his proof and evidence and had not considered his review application in proper manner.

11. Heard Mr. K.Chellappan, Party-in-person and perused the documents available on record.

12. The petitioner/defendant (Party-in-person) and the respondents/ plaintiffs are siblings. The schedule mentioned property measuring 39 cents in Survey No.597/2 in Gerugambakkam Village, Sriperumbudur Taluk,



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belonged to the father of the petitioner and the respondents. Their father died intestate without leaving any Will. Since the petitioner had not come forward for amicable partition, the respondents had filed the suit in O.S. No. 13 of 2014. The trial Court, after a full-fledged trial, considered the evidence of the witnesses and held that the respondents/plaintiffs were entitled to 5/7 share in 0.32 ½ cents and the petitioner/defendant was entitled to 2/7 shares in 32 ½ cents apart from 0.6 ½ cents passed a preliminary decree to that effect on 07.11.2016. Challenging the same, the petitioner had also filed A.S.No.174 of 2017 before this court. This Court, taking note of the suspicious circumstances surrounding and holding that the defendant has not proved the genuineness or otherwise of the Will, held that there was no infirmity in the judgment rendered by the trial court, confirmed the preliminary decree passed by the trial court and dismissed the appeal suit on 20.12.2019. The petitioner/defendant filed Review Application No.36 of 2021 raising the very same grounds and had appeared as party-in-person. This Court, after giving a full audience and after discussing all aspects, had dismissed the review application. Subsequently, the petitioner/defendant has filed C.M.P.SR.No.106297 of 2021 under Order 18 Rule 17 of Code of Civil Procedure to reopen A.S.No.174 of 2017



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to enable him to furnish evidence to expunge the remarks made against him.

WEB COURT

This Court, by an order dated 24.11.2022, rejected the said petition holding that there was no provision to entertain a petition to reopen the appeal suit dismissed the same. Subsequently, the respondents/plaintiffs have filed I.A.No.1 of 2023 in O.S.No.13 of 2014 before District Court No.II, Kanchipuram, to appoint an Advocate Commissioner to cause a local inspection and to submit a report as to how the suit property could be partitioned by metes and bounds. The trial Court, on 14.02.2024, after allowing the counter to be filed and finding that it was necessary to pass a final decree based on the preliminary decree, appointed one Mr.G.Karthikeyan, Advocate, as an Advocate Commissioner and directed him to inspect the suit property, survey the property with the help of surveyor and submit a report as to how the suit property could be divided into seven equal shares. Challenging the appointment of Advocate Commissioner, the petitioner has filed the present civil revision petition.

13. A perusal of the entire materials would reveal that the stand taken by the petitioner in all the proceedings, subsequent to the preliminary decree passed by the Trial Court, is one and the same and thereby, it is clear that



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the petitioner, under the guise of seeking fair consideration, is attempting to, somehow, prevent the decree holders from enjoying the fruits of the decree by filing petitions one after another with the same grounds, which were already considered and rejected by the courts, which cannot be entertained in the interest of justice as it would amount to allowing the abuse of process of law. Therefore, this Court finds no merits in the revision.

14. In the result, the civil revision petition fails and the same is dismissed. No costs.

25.09.2024

Index : No
Neutral Citation : No
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To

- 1.The District and Sessions Judge No.II,
Kanchipuram.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.



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A.D.JAGADISH CHANDIRA, J.

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**Pre Delivery Order in
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25.09.2024