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CRP.No.1279 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP.No.1279 of 2020

Arasayi

... Petitioner

Vs

1.Renganayaki

2.Arukkani

3.Manikandan

4.Neelakandan

... Respondents

Prayer: The Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 23.08.2018 passed in I.A.No.41 of 2016 in O.S.No.10 of 2008 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

For Petitioner : Mr.J.Antony Jesus

For Respondents

For R1 : Died (steps due)

For RR2 to 4 : No appearance



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ORDER

The Civil Revision Petition is directed against the impugned order dated 23.08.2018 in I.A.No.41 of 2016 in O.S.No.10 of 2008 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

2.The petitioner herein as petitioner/plaintiff filed the said application seeking amendment of the preliminary decree passed in her favour.

3.I have heard Mr.J.Antony Jesus, learned counsel for the revision petitioner. Despite service of notice on the respondents 2 to 4, they have not chosen to enter appearance either in person or through counsel.

4.The learned counsel for the revision petitioner, Mr.J.Antony Jesus would submit that the Trial Court erred in holding that the preliminary decree cannot be amended and only an additional preliminary decree alone can be passed.



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5.The learned counsel would place reliance on the following decisions in support of his contentions:

- 1.Ganduri Koteshwaramma and Another Vs. Chakiriyani and Another ((2011) 9 SCC 788.*
- 2.Prema Vs. Nanje Gowda and Others (2011) 6 SCC 462*
- 3.S.Satnam Singh and Others Vs. Surender Kaur and Another ((2009) 2 SCC 562.*

6.Admittedly, the suit was initially decreed and a preliminary decree was granted in favour of the petitioner, declaring the petitioner's 1/2rd share in 'A' schedule and 1/3rd share in 'B' schedule. The said preliminary decree came to be passed on 27.01.2010. It appears that subsequent to the said preliminary decree being passed, the mother of the petitioner settled her share in favour of the petitioner/plaintiff and thereby, the petitioner's share got enlarged to the entire share in items 1 to 7 in 'A' schedule property and 1/3rd share got enlarged to 2/3rd in 'B' schedule property.



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7.The only ground on which the Trial Court has dismissed the application and non suited the petitioner is that the preliminary decree cannot be amended and only an additional preliminary decree can be passed. Unfortunately, the legal position as held by the Hon'ble Supreme Court in *Ganduri Koteshwaramma's* case and *Prema's* case (referred herein supra), where the Hon'ble Supreme Court has clearly laid down the law that preliminary decree can be modified and more than one preliminary decree can be passed prior to passing of the final decree. Therefore, in the light of the settled legal position, the order of the Trial Court is unsustainable and the same is liable to be set aside.

8.In the result, the Civil Revision Petition is allowed. The impugned order dated 23.08.2018 passed in I.A.No.41 of 2016 in O.S.No.10 of 2008 on the file of the District Munsif cum Judicial Magistrate, Neyveli, is hereby set aside. There shall be no order as to costs.

26.09.2024

Index:Yes/No
Speaking order/Non-speaking order
ata

P.B.BALAJI,J.

ata



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To

- 1.The District Munsif cum Judicial Magistrate, Neyveli.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

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