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C.R.P. Nos. 3715 and 3716 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2024

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THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. Nos. 3715 and 3716 of 2022
and
C.M.P. Nos. 19639 and 19640 of 2022

In C.R.P. No. 3715 of 2022:-

R.Mani ... Petitioner / Appellant / Respondent

Vs.

1. R.Duraisamy ... 1st Respondent/1st Respondent/Petitioner

2. The Post Master,
Grade - II,
Rasipuram. ... 2nd Respondent/2nd Respondent/2nd Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the judgment and decree dated 25.01.2021 passed in C.M.A. No. 11 of 2020 on the file of the Principal District Judge, Namakkal.

In C.R.P. No. 3716 of 2022:-

R.Mani ... Petitioner / 1st Respondent

Vs.

1. R.Duraisamy ... 1st Respondent/ Appellant



C.R.P. Nos. 3715 and 3716 of 2022

2. The Post Master,
Grade - II,
Rasipuram Town,
Rasipuram Taluk,
Namakkal District

... 2nd Respondent / 2nd Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the judgment and decree dated 25.01.2021 passed in Cross Objection C.M.A. No. 16 of 2020 on the file of the Principal District Judge, Namakkal.

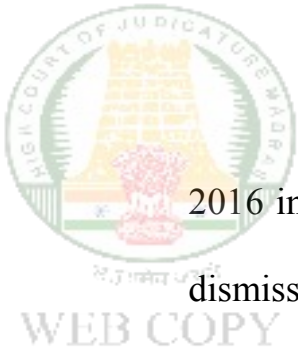
For Petitioner : M/s. R.Shase
(In both CRPs)

For R1 : M/s. D.Chitra Maragatham
(In both CRPs)

For R2 : Mr. C.Samivel
(In both CRPs)

COMMON ORDER

These Civil Revision Petitions have been preferred as against the order dated 25.01.2021 passed in C.M.A. No. 11 of 2020 and the Cross Objection dated 25.01.2021 in C.M.A. No. 16 of 2020 on the file of the Principal District Judge, Namakkal, wherein, the petitioner and the 1st respondent herein have filed an appeal and Cross Objection against the order dated 26.11.2019 passed by the Sub Court, Rasipuram respectively in I.A. No. 1 of



2016 in S.O.P. No. 1 of 2013. The said appeal in C.M.A. No. 11 of 2020 was dismissed and the said Cross Objection C.M.A. No. 16 of 2020 was allowed. Against which, these present Civil Revisions Petitions are filed.

2. The brief facts which are necessary to dispose these petitions are as follows:-

The petitioner and the 1st respondent jointly filed petition in S.O.P. No. 1 of 2013 before the Trial Court for issuance of Succession Certificate and the same was allowed and the Succession Certificate was issued on 14.07.2014 stating that both the petitioners in the said S.O.P. are entitled to equal share. Thereafter, due to misunderstanding between the parties, the 1st respondent herein approached the 2nd respondent for getting his share and the same was refused. Thereafter, the 1st respondent herein filed an application in I.A. No. 1 of 2016 in S.C.O.P. No. 1 of 2013 before the Sub Court, Rasipuram to direct the 2nd respondent herein to pay a half share of the amount deposited into the 2nd respondent and the same was allowed. Challenging the said order, the petitioner herein has filed an appeal in C.M.A. No. 11 of 2020 before the Principal District Judge, Namakkal against which, the 1st respondent herein filed Cross Objection C.M.A. No. 16 of 2020 for further amount of half share in Rs. 2,50,000/- which was omitted in I.A. No. 1 of



2016. The 1st Appellate Court dismissed the C.M.A. No. 11 of 2020 filed by the petitioner herein and allowed the Cross Objection C.M.A. No. 16 of 2020 filed by the 1st respondent and directed the 2nd respondent to disburse the amount equally with accrued interest. Aggrieved by the said orders, these Civil Revision Petitions are filed.

3. The learned counsel appearing for the petitioner would contend that the petitioner and the 1st respondent are brothers and they jointly filed petition for Succession Certificate before the Trial Court and the same was allowed. Thereafter, the 1st respondent herein filed an application in I.A. No. 1 of 2016 in S.O.P. No. 1 of 2013 to disburse the amount of his half share and the same was allowed by the Trial Court. After issuing Succession Certificate, the Trial Court cannot entertain the application for disbursing the amount. There is the dispute in respect of other immovable properties. Therefore, the 1st respondent ought to have filed Civil Suit. Further, the 1st Appellate Court also, without considering the legal position, entertained the cross objection and directed to disburse the amount in respect of other items. Therefore, the order passed by the Trial Court as well as the 1st Appellate Court are liable to be set aside.



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4. The learned counsel appearing for the 1st and 2nd respondents would contend that already both the petitioner and the 1st respondent have jointly filed petition for issuance of Succession Certificate and the same was allowed. Thereafter, due to misunderstanding between the parties, the petitioner did not cooperating with the 1st respondent. Therefore, the 1st respondent filed an application in I.A. No. 1 of 2016 in S.O.P. No. 1 of 2013 in respect of his half share and the same was allowed. The said order was challenged before the 1st Appellate Court and before the 1st Appellate Court, the 1st respondent herein has filed Cross Objection in C.M.A. No. 16 of 2020 since one of the item of the property was omitted in I.A. No. 1 of 2016. Therefore, the 1st Appellate Court, after considering the facts and circumstances of the case, correctly dismissed the C.M.A. No. 11 of 2020 filed by the petitioner herein and allowed the Cross Objection C.M.A. No. 16 of 2020 filed by the 1st respondent herein. There is no apparent error and no any violation of law in the order passed by the Trial Court. Therefore, the present Civil Revision Petitions are liable to be dismissed.

5. This Court heard both sides and perused the materials available on record.



6. In this case, there is no dispute that both the petitioner and the 1st respondent are brothers and they jointly filed the petition in S.O.P. No. 1 of 2013 before the Sub Court, Rasipuram for issuance of Succession Certificate and the same was allowed. As per the said order, both the petitioner and the 1st respondent are equally entitled to share over the deposits made before the 2nd respondent. Thereafter, due to misunderstanding between the parties, the petitioner did not cooperate with the 1st respondent in getting the deposit amount. Therefore, the 1st respondent filed an application in I.A. No. 1 of 2016 in S.O.P. No. 1 of 2013 to disburse the amount from the 2nd respondent prior to that when the 1st respondent approached the 2nd respondent, he refused to disburse the amount of his share as per the Succession Certificate. Thereby, the 1st respondent has filed the said I.A. before the Trial Court. The Trial Court, after hearing both sides, allowed the application and directed the 2nd respondent to disburse the share of the 1st respondent. The said order was challenged by the petitioner herein through appeal in C.M.A. No. 11 of 2020. In the said C.M.A. , the 1st respondent has been preferred Cross Objection in C.M.A. No. 16 of 2020 stating that one of the item has to be mentioned which was omitted in the said I.A. The 1st Appellate Court dismissed the C.M.A. No. 11 of 2020 filed by the petitioner and allowed the Cross Objection C.M.A. No. 16 of 2020 filed by the 1st respondent.



7. The main contention of the petitioner is that after disposal of the S.O.P. No. 1 of 2013, the I.A. cannot be entertained. It is an admitted fact that both are equally entitled to share over the properties. After getting Succession Certificate, there was a dispute between the parties with regard to immovable properties and the petitioner did not cooperate for the 1st respondent. Therefore, the 1st respondent herein has filed application in respect of his share alone. There is no bar in filing the application to get his share separately, since already Succession Certificate was issued. Though, there is dispute in respect of the immovable properties, those issues can be decided through separate suit. Since already the Succession Certificate was issued, in order to meet the ends of justice and to avoid multiplicity of proceedings, the Trial Court as well as the 1st Appellate Court, entertained the application and correctly ordered to disburse the amount of the share of the 1st respondent.

8. As far as the cross objection is concerned, it is an admitted fact that the amount in respect of Rs. 2,50,000/- which was included in the main Succession Petition but the same was omitted to be included in I.A. No. 1 of 2016. Therefore, the 1st Appellate Court correctly allowed the Cross Objection C.M.A. No. 16 of 2020. Since there is no dispute in respect of the quantum of share between the parties, the Trial Court has correctly allowed



the petition and directed the 2nd respondent to disburse the amount. The 1st Appellate Court also, after considering the facts and circumstances of the case, correctly dismissed the C.M.A. No. 11 of 2020 filed by the petitioner and allowed the Cross Objection C.M.A. No. 16 of 2020 filed by the 1st respondent. Therefore, the orders passed by the Trial Court and the judgments passed by the 1st Appellate Court are proper and they do not warrant interference.

9. In view of the aforesaid discussions, this Court is of the opinion that these Civil Revision Petitions have no merits and deserves to be dismissed. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

02.08.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

The Principal District Judge, Namakkal.



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P.DHANABAL, J.,

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