



C.R.P.No.2096 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No.2096 of 2021
and
C.M.P. No.15942 of 2021

1. Mecheriammal W/o. Periyannan
2. Chinnasamy S/o. Periyannan
3. Radhakrishnan S/o. Periyannan
4. Krishnan S/o. Periyannan
5. Dhanabakyam W/o. Govindan D/o. Periyannan
6. Sakunthala W/o. Devaraju D/o. Periyannan
7. Krishnaveni W/o. Velu

... Petitioners

vs.

1. Murugammal W/o. Vajiram
D/o. VenkataGounder

2. Dhasaradhan S/o. Radhakrishnan

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order dated 26.08.2021 passed in I.A. No.562 of 2021 in I.A. No.323 of 2007 in O.S. No.215 of 1977 on the file of the District Munsif Court, Dharmapuri.



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For Petitioner : Mr. T.R. Rajaraman

For Respondents : Mr. Elizabeth Ravi [for R1]
R2 – Served -No appearance.

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioners seeking leave of the Court to lead oral evidence in the final decree proceedings.

2. One Palaniammal filed a Suit for partition against the respondents and deceased Periyannan Gounder. The petitioners herein are legal representatives of Periyannan Gounder. The Suit filed by Palaniammal was decreed by the Trial Court and aggrieved by the same, the deceased Periyannan / 2nd defendant filed an appeal in A.S. No.4 of 1989. The said appeal was partly allowed and the Trial Court judgment and decree was modified by granting half share to Palaniammal in respect of Suit properties situated in Survey Nos.430, 431 and northern 1.03 acres in S. No.432. The plaintiff Palaniammal was given half share in the house property described as



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3. Thereafter, the 1st respondent herein who was arrayed as 1st defendant in the Suit filed an application for passing of final decree in I.A. No.323 of 2007. The petitioners herein filed an I.A. No.972 of 2016 seeking passing of supplementary preliminary decree by contending that there was a panchayat after preliminary decree in which dispute between the parties were settled. According to the petitioners, as per the Panchayat, their predecessor in interest Periyannan had executed a Sale Deed in respect of 2 acres of land in favour of Palaniammal on 23.08.1996 and she, in turn, had executed a Sale Deed in respect of portion of the land in Survey Nos.430 and 431. It was also claimed that Murugammal had received a sum of Rs.15,000/- and relinquished her share. The 1st respondent herein filed revision petitions before this Court in C.R.P. Nos.1380 and 1381 of 2018 seeking to strike off the above said I.A. No.972 of 2016 and this Court came to the conclusion that oral relinquishment pleaded by the petitioners could not be accepted. It was also observed by this Court that settlement subsequent to the passing of preliminary decree as pleaded by the petitioners was not recorded or



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recognized by the Court and hence the same could not be recognized.

Therefore, the application filed by the petitioners for passing supplementary preliminary decree in I.A. No.972 of 2016 was rejected by this Court by allowing revision petitions filed by the 1st respondent.

4. Thereafter, the petitioners filed the instant application seeking leave of the Court to lead oral evidence. In the affidavit filed in support of the present application, it is stated by the petitioners that subsequent to the passing of preliminary decree, there was a relinquishment of Suit properties in favour of the petitioners and patta was also transferred in their name as per the Panchayat decision. It was also claimed that 2 acres of land was sold to the 1st respondent in I.A. No.323 of 2007, namely Palaniammal and she, in turn, sold the property in Survey Nos.430 and 431 in favour of the petitioners. It was also claimed that the petitioners had made improvements in the Suit properties and in order to prove those subsequent events that had taken place subsequent to the passing of preliminary decree, an opportunity shall be given to the petitioners to lead oral evidence.



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5. The Trial Court came to the conclusion that the settlement as per the Panchayat's decision and oral relinquishment etc., as pleaded by the petitioners were already held to be invalid by this Court in C.R.P. No.1361 of 2018 and hence the petitioners are not entitled to lead oral evidence in respect of those pleas. Aggrieved by the same, the petitioners are before this Court.

6. The learned counsel appearing for the petitioners submitted that irrespective of the fact that earlier application filed by the petitioners for passing of supplementary preliminary decree was dismissed, the petitioners are entitled to lead oral evidence in respect of the subsequent events that had taken place subsequent to passing of preliminary decree. The learned counsel further submitted that any observation made by this Court in the earlier Civil Revision Petition would not operate as *res judicata*. It is further submitted that in the interest of justice, an opportunity shall be given to the petitioner to lead oral evidence in support of the plea raised in the affidavit.

7. The learned counsel appearing for the respondents submitted that the main Suit is of the year 1977 and the present application for passing of



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final decree itself was of the year 2007. The petitioners herein by filing number of applications are dragging the final decree proceedings unnecessarily. The learned counsel further submitted that when this Court in an earlier order passed in revision held settlement in Panchayat and oral relinquishment pleaded by the petitioners could not be recognized in law in the absence of recording of the same by the Court, the petitioners are not entitled to lead oral evidence.

8. It is seen from the documents filed in the typed set of papers, the petitioners filed an application for passing of supplementary preliminary decree on the ground that there was a settlement between the parties based on Panchayat decision subsequent to the passing of preliminary decree. It was also claimed that there was a relinquishment by the respondent on receipt of Rs.15,000/-. However, the alleged settlement and the alleged oral relinquishment was not at all recorded before the Court. This Court in the order passed in C.R.P. No.1381 of 2018 negated the contention of the petitioners and as a consequence, rejected the application filed by them to pass a supplementary preliminary decree by exercising supervisory powers



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under Article 227 of Constitution of India. In such circumstances, it is not open to the petitioners to file another application seeking leave of the Court to lead oral evidence in respect of the very same pleas raised by them earlier, which was already rejected by this Court.

9. It is settled law, any out of Court settlement / oral relinquishment will not have any legal sanctity unless it is recorded by the Court. Further, the preliminary decree is already passed by the Court and according to the petitioners, some settlement has been reached between the parties after passing preliminary decree. The partition Suit is deemed to be pending till the passing of final decree. Any improvement made by the petitioners pending Suit will not enable them to claim equity. When pleas made by the petitioners regarding such settlement and oral relinquishment were rejected by this Court in Civil Revision Petition No.1381 of 2018, the petitioners are not entitled to lead any oral evidence in respect of the said plea. Further the settlement pending suit and the improvement based on that settlement will not cloth the petitioners with any legal right or equity. In such circumstances, the petition filed to lead oral evidence in respect of the pleas which were already



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rejected by the High Court is not at all necessary and it will not enable the Court to decide the controversy involved in the final decree petition in more comprehensive way. In such circumstances, I do not find any error in the order passed by the Trial Court.

10. Accordingly, this Civil Revision Petition stands dismissed. No costs. The connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The District Munsif Court, Dharmapuri.



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S.SOUNTHAR, J.

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