



C.R.P.No.2327 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 12.06.2023

Delivered on: 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA

KURUP

C.R.P.No.2327 of 2021

and

C.M.P.No.17658 of 2021

K.S.Nataraja Chettiar

...Petitioner/Petitioner/2nd Respondent/
2nd Defendant

-Vs-

1.G.Ramesh

...1st Respondent/1st Respondent/
Petitioner/1st Plaintiff

2.G.Srinivasan

...2nd Respondent/2nd Respondent/
Petitioner/2nd Plaintiff

3.K.S.Govindha Chettiar

...3rd Respondent/3rd Respondent/
1st Respondent/1st Defendant

Prayer:- Civil Revision Petition filed under Section 115 of CPC, to set aside the order dated 23.08.2021 made in I.A.No.1 of 2020 in I.A.No.687 of 2010 in O.S.No.53 of 1997 on the file of the learned Additional Subordinate Judge, Vellore, Vellore District.



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For Petitioner	: Mr.A.V.Arun for Mr.R.Sugumaran
For R1 & R2	: Mr.J.Saravana Vel
For R3	: No appearance

ORDER

The Civil Revision Petition has been filed to set aside the order dated 23.08.2021, made in I.A.No.1 of 2020 in I.A.No.687 of 2010 in O.S.No.53 of 1997 on the file of the learned Additional Subordinate Judge, Vellore, Vellore District.

2. This Petition is filed by the 2nd Defendant in the suit in O.S.No.53 of 1997. The suit in O.S.No.53 of 1997 was filed for relief of partition by the sons of the elder brother of the Revision Petitioner.

3. In the suit, the Revision Petitioner herein was impleaded as 2nd Defendant. A preliminary decree was passed in favour of the Plaintiffs and against the 1st Defendant. In the suit in O.S.No.53 of 1997, the 2nd Defendant was set *ex parte*. The 2nd Defendant is the paternal uncle of the Plaintiffs in O.S.No.53 of 1997. He had purchased the property through a registered Sale Deed from the father of the Plaintiffs, the 1st Defendant in



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O.S.No.53 of 1997. After passing the preliminary decree, the Plaintiffs in

O.S.No.53 of 1997 filed Petition in I.A.No.687 of 2010 in O.S.No.53 of 1997 for a final decree. In the final decree application, the 2nd Defendant as 2nd Respondent was set *ex parte*. Subsequently, the 2nd Defendant as 2nd Respondent filed Petition in I.A.No.1 of 2020 in I.A.No.687 of 2010 in O.S.No.53 of 1997, seeking to set aside the *ex parte* order passed against him in I.A.No.687 of 2010 in O.S.No.53 of 1997. The same was dismissed by the learned Additional Subordinate Judge, Vellore, Vellore District, by order dated 23.08.2021.

4. It is the submission of the learned Counsel for the Revision Petitioner that, by setting aside the *ex parte* order, the Revision Petitioner will be able to protect his share in the property which he derived from the father of the Plaintiffs in O.S.No.53 of 1997. If the Petition is not allowed, the Revision Petitioner will suffer injustice by not being allowed to participate in the final decree.

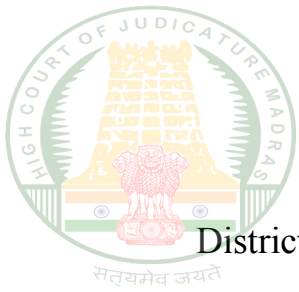
5. When the case came up for hearing on earlier occasion, on request of the learned Counsel for Respondents 1 and 2, the then learned Judge of this Court referred the matter for mediation. In the mediation, the dispute



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was not amicably settled. Therefore, once again, the case came up for hearing before the Court.

6. Learned Counsel for Respondents 1 and 2 submitted that the Petitioner as 2nd Defendant was set *ex parte* in 2004 itself. Preliminary decree was passed on 16.03.2004, it had attained finality. The preliminary decree was granted in favour of the Plaintiffs' for 2/3 share and 1/3 share to the father of the Plaintiffs. The final decree proceedings commenced in I.A.No.687 of 2010 in O.S.No.53 of 1997. The report was filed by the Advocate Commissioner on 20.09.2012. I.A.No.563 of 2013 was filed by the Petitioner to condone the delay of 3393 days in setting aside the *ex parte* order. The said Petition was dismissed. Against which, the Revision Petitioner herein 2nd Defendant in O.S.No.53 of 1997 had not filed any Revision or Appeal. It is the contention of the Petitioner that he was not served notice in all the proceedings. Hence, he did not appear. After 9 years, he had filed this Petition seeking to set aside *ex parte* order passed against him in I.A.No.687 of 2010 in O.S.No.53 of 1997 for final decree application. It is nothing but only to cause harassment to the decree holders. The learned Counsel for Respondents 1 and 2 submitted that the order passed by the learned Additional Subordinate Judge, Vellore, Vellore



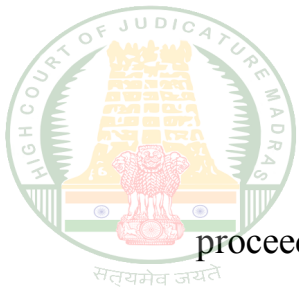
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WEB COPY District, is a well-reasoned order which does not warrant any interference by this Court exercising the power under Section 115 of CPC and this Petition has no merit.

Point for Consideration:

Whether the order passed by the learned Additional Subordinate Judge, Vellore, Vellore District, dismissing I.A.No.1 of 2020 in I.A.No.687 of 2010 in O.S.No.53 of 1997 by order dated 23.08.2021 is to be set aside as perverse?

7. Before partition, the father of the Plaintiffs is alleged to have sold property to the Petitioner herein, who is none other than the paternal uncle of the Plaintiffs in O.S.No.53 of 1997. Therefore, whatever the share in the final decree allotted to the father has to be considered in favour of the Petitioner herein regarding the Petitioner's share. By allowing the Petitioner to participate in the final decree, Respondents 1 and 2 who are the Plaintiffs 1 and 2 respectively in the suit are in no way prejudiced. He has to be permitted to participate in the final decree proceedings so that his share in the property, which forms part of the share of the father of the Plaintiffs, has to be protected. Therefore, to protect the valuable right of the Petitioner herein, he is to be permitted to participate in the final decree



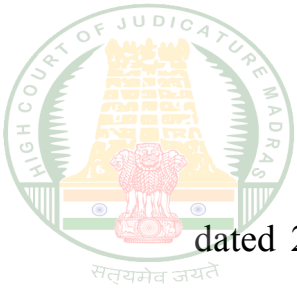
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proceedings. It cannot be considered harassment since the father of the Plaintiffs sold the property before partition. What is allotted or is likely to

be allotted to the father of the Plaintiffs in O.S.No.53 of 1997 will be binding on Defendants 1 and 2 in the suit in O.S.No.53 of 1997. It is between the father of the Plaintiffs and the 2nd Defendant. Otherwise, if a decree is passed behind the back of the Petitioner, the Petitioner will be prejudiced, which will result in miscarriage of justice, for which a second round of litigation has to be initiated by the Petitioner herein to establish his rights. To avoid multiplicity of proceedings, it is better that the Petitioner be permitted to participate in the final decree proceedings.

8. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondents. The order passed by the learned Additional Subordinate Judge, Vellore, Vellore District, in I.A.No.1 of 2020 in I.A.No.687 of 2010 in O.S.No.53 of 1997 dated 23.08.2021 is to be set aside as perverse.

In the result, the **Civil Revision Petition is allowed.** The order passed by the 1 learned Additional Subordinate Judge, Vellore, Vellore District, in I.A.No.1 of 2020 in I.A.No.687 of 2010 in O.S.No.53 of 1997



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dated 23.08.2021 is hereby set aside. No costs. Consequently, connected

miscellaneous petition is closed.

29.04.2024

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

1. The Additional Subordinate Judge,
Vellore, Vellore District.
2. The Section Officer, VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

**Order in
C.R.P.No.2327 of 2021**

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