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C.R.P.[NPD].No.3724 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date 04.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.3724 of 2024

A.K.T.Mahendran

. . . Petitioner

Versus

1. Kalavathi
2. Madhavan
3. Pushpalatha
4. Sridhar
5. Ravichandran
6. Shanthi
7. Geethalakshmi
8. Pandian
9. Perumal Chettiar

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to allow this revision petition by setting aside the fair and decreetal Orders dated 15.03.2024 in I.A.No.1261 of 2019 in O.S.No.409 of 1981 passed by the Principal District Munsif, Kallakurichi.



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For petitioner : Ms.Hema Sampath, Senior Counsel
for Ms.R.Meenal

For respondents : Mr.C.Munusamy – R5

ORDER

Challenging the fair and decreetal Order holding that the petitioners 6 to 12 are entitled to 1/3rd share and thereby appointing the Advocate Commissioner for suggesting partition of the suit property, the present Civil Revision Petition has been filed.

2. The brief facts leading to filing of this revision is as follows :

The suit property was originally owned by one Raju Naidu. The suit in O.S.No.138 of 1979 has been filed by one Govindammal, who is said to be the second wife of the said Raju Naidu, for 1/3rd share in the 'B' schedule property. The defendants Sriramulu and Thambaian are sons born to Raju Naidu through his first wife, Rajakantham. She is said to have died in the year 1946. After her death, Govindammal married Raju Naidu. The suit filed by the said Govindammal was decreed in her favour for partition of 1/3rd share. In the meanwhile, the



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revision petitioner has purchased half share in the property from Thambaian, one of the son of Raju Naidu, born through his first wife. Both suits were tried together and ultimately the suit filed by Govindammal was decreed and the same has been confirmed by the Apex Court in Civil Appeal No.4357 and 4358 of 2000. Pursuant to the same, an application for final decree has been filed and in the above proceedings, it appears that the Advocate Commissioner has also been appointed. Challenging the same, the present revision has been filed.

3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner purchased half share from one Tambaian, who is one of the co-owner. Therefore, it is his contention that he is entitled to half share in the suit property. He further submitted that the suit has been decreed allotting 1/3rd share in favour of Govindammal. Therefore, the 8th respondent is the legatee of Govindammal and he is entitled to 1/3rd share. Whereas, the Court below has observed that all the legal heirs are entitled to 1/3rd share each. Challenging the same, the present Civil Revision Petition has been filed.

4. I have perused entire records. The judgement of the Apex Court is very



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clear in holding that Govindammal, who is the second wife of Raju Naidu is entitled to 1/3rd share in both the schedule properties. The matter has reached finality and the rights of the parties has already been confirmed in the preliminary decree. Hence, there cannot be any enlargement or diminishing of the right of the parties in the final decree. The final decree has to be passed only in terms of the preliminary decree. In such view of the matter, this revision fails.

5. As far as equity aspect is concerned, the revision petitioner may seek allotment, considering his long possession and it is for the trial Court to decide the matter considering all the aspects in this regard.

6. With the above observation, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order

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N. SATHISH KUMAR, J.

vrc

order in:

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