



C.R.P. (PD) .No. 3919 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.10.2024

CORAM

**THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN**

**C.R.P.(PD).No. 3919 of 2024**

**&**

**C.M.P.No. 21446 of 2024**

L.Loganathan

...Petitioner

Vs.

Anjalai (Deceased)

1.S.Maragadham

2.Suresh

3.Tamilnadu Slum Clearance Board,  
Rep. by its Chairman,  
No.5, Kamarajar Salai,  
Chennai.

4.Sub Registrar  
T. Nagar, Chennai – 600 017.

...Respondents



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**Prayer:** Petition is filed under Article 227 of the Constitution of India against the order dated 25.06.2024 passed in I.A.No.1 of 2022 in O.S.No.5795 of 2002 on the file of the V Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. J.Ravikumar  
For Mr. D.Ravikumar

For Respondent 4: Mr. C.Sathish  
Government Advocate.

### **ORDER**

This Civil Revision Petition is filed at the instance of the 1<sup>st</sup> defendant. The short facts necessary for disposal of the case are the Tamilnadu Slum Clearance Board had allotted the property in favour of Govindhammal. The said Govindhammal had three children, namely, Loganathan, Selvaraj and Anjalai. The said Govindhammal had passed away on 06.04.2000.



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2. Thereafter, the 1<sup>st</sup> defendant Loganathan obtained a sale deed in his favour from the Tamilnadu Slum Clearance Board on 21.06.2001. Claiming that as she is a daughter of Govindhammal, Anjalai filed O.S.No.5795 of 2002 seeking partition. The defendants 2 and 3 are the wife and son of the pre-deceased son of Govindhammal, namely, Selvaraj.

3. A written statement was filed by the defendants. The 1<sup>st</sup> defendant claimed that he had got the sale deed in his favour on account of the fact that he had paid all the dues to Tamilnadu Slum Clearance Board. He pleaded that though allotment was in the name of Govindhammal, she never became the owner of the property during her lifetime and all the dues have been paid by the 1<sup>st</sup> defendant and thus he is the owner of the property.

4. The defendants 2 and 3 supported the 1<sup>st</sup> defendant by filing an



adopting written statement.

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5. Thereafter, the defendants did not proceed further with the matter. The matter was called before the V Assistant City Civil Court, Chennai, and an ex parte preliminary decree was passed on 17.04.2006.

6. In order to put the preliminary decree into execution, the plaintiff Anjalai, took out an application in I.A.No.2554 of 2010. Pending the said application, she passed away. Therefore, two persons, namely, one Krishnamoorthy and one Bhaskar claiming to be sons of Anjalai filed an application to bring themselves on record in I.A.No.15734 of 2013. At the same time, the 1<sup>st</sup> defendant took out an application in I.A.No.10963 of 2010 seeking to condone the delay of 1212 days in setting aside the ex parte decree. The said application came to be closed on account of the fact that the petition filed by the legal representatives of Anjalai was dismissed for default. This order was passed on 28.06.2017. No steps have been taken by the 1<sup>st</sup> defendant to have the ex parte order set aside.



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7. After having waited for a couple of years defendants 2 and 3 took out an application for passing of final decree in I.A.No.1 of 2022. Notice was ordered in the said application and a counter was also filed by the 1<sup>st</sup> defendant. The learned Judge allowed the application on 25.06.2024. Hence, the revision.

8. Heard Mr.J.Ravikumar representing Mr.D.Ravikumar for the civil revision petitioner.

9. Mr.J.Ravikumar argues that as the defendants 2 and 3 had supported the case of the 1<sup>st</sup> defendant when the suit was presented, therefore, they cannot take an application for passing of final decree. He draws my attention to the written statement that had been filed by the 2<sup>nd</sup> defendant, wherein it was specifically pleaded by her that she is adopting the written statement filed by the 1<sup>st</sup> defendant. He argues that as the 2<sup>nd</sup> defendant had accepted the case of the 1<sup>st</sup> defendant, it is



not open to her to file a final decree application.

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10. I have carefully considered the submissions of Mr.J.Ravikumar.

11. I am not in a position to agree with the arguments of Mr.J.Ravikumar. Whatever might be the defense that is taken by the parties in litigation especially in a partition suit, what finally matters is the decree that has been passed by the Court. By virtue of the preliminary decree passed by the learned V Assistant City Civil Court, on 17.04.2006, the defense that had been raised by the defendants 1, 2 and 3 stood rejected. Once the suit is decreed, being a partition suit, any sharer can take out an application for passing of final decree. It is not in dispute that defendants 2 and 3 are the legal heirs of the deceased Govindhammal. If that be the situation, then the defendants 2 and 3 are not incompetent to file an application for final decree.

12. Mr.J.Ravikumar submits that the order passed by the Trial



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Court on 28.06.2017 in I.A.No.10693 of 2010 is erroneous order. Even if it were be so, till the erroneous order is set aside by that Court or the Superior Court it has to be treated as a valid. That being the position of law and there is no dispute that the respondents 1 and 2 are the legal heirs of Govindhammal and defendants in the suit, I do not find any reason to interfere with the impugned order.

13. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

**01.10.2024**

Index : Yes/No  
Internet : Yes/No  
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To

The V Assistant Judge,  
City Civil Court,  
Chennai.



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**V.LAKSHMINARAYANAN, J.**

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