

C.R.P.(MD)No.1055 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :06.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.1055 of 2013

Thangammal

... Petitioner

Vs.

1.Abdul Authalif (died)

2.Rakku Nachiar (died)

Mohammed Abubucker (died)

Thulasiraman (died)

Baskaran (died)

3.Mokkammal

4.Muthu Nachiar

(R4 is brought on record as Lrs of deceased R2 vide Court order dated 14.12.2020 made in C.M.P.No.5346 of 2018 in C.R.P.(MD).No. 1055 of 2013)

5.Bazzer

6.Pyrose Banu

7.Piruthose

1/10



C.R.P.(MD)No.1055 of 2013

8.Thasanna

9.Ayeesda

10.Poothumponnu

... Respondents

(Respondent 5 to 10 are brought on record as LR's of the deceased 1st respondent vide order dated 20.07.2023 made in C.M.P.(MD).No.4082 of 2020 in C.R.P.(MD).No.1055 of 2013)

PRAYER : Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 12.06.2013 made in E.A.No.69 of 2010 in E.P.No.80 of 2004 in O.S.No. 95 of 1985 on the file of the District Munsif Court, Paramakudi.

For Petitioner : Mr.J.John

For Respondents : R1 and R2 Died
: R3 Dispensed with
: Mr.D.Senthil for R4
: Mr.S.Srinivasa Raghavan for R5 to R10

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 12.06.2013, made in E.A.No.69 of 2010, in E.P.No. 80 of 2004, in O.S.No.95 of 1985, on the file of the District Munsif Court, Paramakudi.



C.R.P.(MD)No.1055 of 2013

2. The revision petitioner is the first defendant in O.S.No.95 of 1985. The original respondent Nos.1 and 2, in this revision petition filed a suit in O.S.No.95 of 1985 seeking partition of two schedule of properties mentioned in the suit schedule properties. The said suit was decreed in respect of A scheduled property. With regard to B schedule property, the suit was dismissed.

3. On the basis of the decree in O.S.No.95 of 1985, final decree application was filed in I.A.No.142 of 2003. In the said final decree application, the final decree was granted in respect of B schedule property also. Even though the petitioner raised objection, the same was not considered and the preliminary decree was passed in I.A.No.142 of 2003, against which, the said final decree application in A.S.No.9 of 2007 was filed and the same was dismissed. Aggrieved over the same, the petitioner filed a suit in S.A.No.1453 of 1999 and the respondents filed S.A.No.1429 of 1999 and the same was also confirmed. Aggrieved over the same, S.L.P.No.15204 of 2009 also was filed and the same was dismissed.



C.R.P.(MD)No.1055 of 2013

WEB COPY

4. Now, on the basis of the final decree in I.A.No.142 of 2003, E.P.No.80 of 2004 was filed by the original plaintiff. In the said E.P., proceedings, E.A.No.16 of 2010 was filed under Section 47 of C.P.C., by the revision petitioner and the same was dismissed by the impugned order dated 12.06.2013, and challenging the same, he has filed the revision petition before this Court.

5. The learned counsel for the petitioner submitted that even though the S.L.P.No.15204 of 2009 was dismissed, after the dismissal of the second appeal, he filed the review petition before this Court and the same was not numbered. In view of the pendency of the review, he seeks indulgence of this Court to hear the matter along with this revision petition. This Court is not inclined to accept his request on the ground that the review is still not numbered. The learned counsel for the petitioners submitted that the final decree was passed beyond the scope of preliminary decree in O.S.No.95 of 1985. He further submitted that the preliminary decree was passed in respect of “A schedule” property in O.S.No.95 of 1985 and final decree was passed for “B schedule”



C.R.P.(MD)No.1055 of 2013

property also. Hence, the petitioner filed application in E.A.No.69 of 2010, as he is entitled to challenge the same as it is a nonest decree and also invalid decree and the same can not be executed. For which, he relied the following judgments of the Hon'ble Supreme Court and High Courts:

(i)In the case of ***Sankar Balwant Lokhande (dead) by L.Rs. vs. Chandrakant Shankar Lokhande and another*** reported in ***1995 SCC (3) 413***

(ii)In the case of ***Athianna Gounder and another vs. Kumaraswamy (now deceased) and R.Natarajan*** reported in ***1997 (1) LW 373***

(iii)In the case of ***M/s.Meenakshisundaram Textiles vs. M/s.Valliammal Textiles Ltd.,*** reported in ***2011 (3) LW 80***

(iv)In the case of ***Minor Divya vs. Sengamalai*** reported in ***2011 (3) LW 88***

(v)In the case of ***T.Muthukumarasamy vs. J.Selvasundarraaj*** in ***S.A.(MD).No.62 of 2011***

(vi)In the case of ***N.Mohan and others vs. Ejaz Khilji*** reported in ***2018 (1) LW 509***



C.R.P.(MD)No.1055 of 2013

(vii)In the case of *Vijayalakshmi vs. Pushparani* in *C.R.P. (NPD).No.3261 of 2016*

(viii)In the case of *Vummidi Bangaru Chetty (p) Ltd vs. M/s. Spencer & Co.Ltd.*, in *C.R.P.No.3235 of 2001*

Hence, he seeks to set aside the order passed by the learned trial Judge.

6.The learned counsel for the respondent on the other hand submitted that similar submission was made in the application filed under Section 47 C.P.C., in E.A.No.69 of 2010 and raised in I.A.No.142 of 2003 and the same was considered by the learned trial Judge and also the same was confirmed by the first appellate Court in A.S.No.9 of 2007 and further confirmed by this Court in S.A.No.38 of 2009. Hence, his plea was already addressed in all the forums. Hence, he has no right to adjudicate the same by way of filing the petition under Section 47 of C.P.C. The learned counsel also submitted that the S.L.P.No.15204 of 2009 was also filed against S.A.No.38 of 2009 and the learned counsel across the table submitted that he was not aware of the said proceedings and he cannot say anything about it without going into the issue of the



C.R.P.(MD)No.1055 of 2013

S.L.P.No.15204 of 2009.

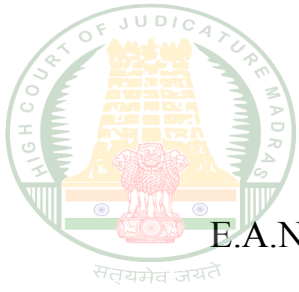
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7.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on records, namely, the finding in S.A.No.38 of 2009.

8.This Court frames the following questions for determination:

8.1Whether the petitioner is entitled to adjudicate the issue in E.A.No.69 of 2010 filed under Section 47 of C.P.C., which had already been decided in I.A.No.142 of 2003 and confirmed in A.S.No.9 of 2007 and affirmed in S.A.No.39 of 2009?

9.From the submission of both side counsel, it is clear that the subject of E.A.No.69 of 2010 was the subject matter of final decree proceedings in I.A.No.142 of 2003 in O.S.No.95 of 1985. The said final decree application had attained finality against the petitioner in S.A.No. 38 of 2009 and the same also was confirmed by the Hon'ble Supreme Court in S.L.P.No.15204 of 2009. Therefore, the execution Court correctly dismissed the petition filed by the revision petitioner in



C.R.P.(MD)No.1055 of 2013

E.A.No.69 of 2010 vide impugned order dated 12.06.2003. Therefore, this Court finds no reason to interfere with the order of the Court below and to entertain this civil revision petition.

10. Further, the revision petitioner is always entitled to file restitution petition under Section 144 of C.P.C., in the event of his success in the review petition filed by him in S.A.No.38 of 2009.

11. With these observations, this Civil Revision Petition stands dismissed and the fair and decretal order dated 12.06.2013, made in E.A.No.69 of 2010, in E.P.No.80 of 2004, in O.S.No.95 of 1985, by the learned District Munsif, Paramakudi, is hereby confirmed. There shall be no order as to costs.

06.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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C.R.P.(MD)No.1055 of 2013

To.

1. The District Munsif Court, Paramakudi.



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C.R.P.(MD)No.1055 of 2013

K.K.RAMAKRISHNAN, J.

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C.R.P.(MD).No.1055 of 2013

06.08.2024