



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.03.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

REV.APLC.(MD) No.156 of 2014

in

C.R.P.(MD).No.654 of 2005

and

M.P.(MD).No.1 of 2014

Nambi Konar

... Petitioner

Vs.

1.Sudalai Muthu Konar

2.Ulagammal

3.Lakshmi

4.Essaki Ammal

5.Bhagavathi

6.Essaki Konar

7.Krishna Konar

8.Gomathi Ammal

9.Paramasiva Konar

10.Parvathi Ammal

... Respondents

Prayer : Review Petition filed under Section 114 & Order 47 Rule (1) of C.P.C., praying to pass an order reviewing the order dated 11.04.2014 passed in C.R.P.(MD).No.654 of 2005 on the file of this Court by allowing this Review Petition.

For Petitioner : Mr.S.Sivathilakar



For Respondents : Mr.A.Arumugam (for R1 & R2)
No appearance (for R4,5,6 and 9)

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ORDER

This review application filed for reviewing the order dated 11.04.2014 passed in C.R.P(NPD).(MD).No.654 of 2005 on the file of this Court.

2.The petitioner herein is the fourth the defendant in the suit. The first respondent/plaintiff filed a suit in O.S.No.56 of 1980 before the District Munsif, Ambasamudram, seeking for partition and separate possession and preliminary decree was passed on 14.09.1981. Thereafter, due to bifurcation of the Court, the case was transferred along with the final decree application to the District Munsif Court, Nanguneri, wherein, renumber was assigned as O.S.No.155 of 2000 along with final decree application in I.A.No.820 of 2000. In the said final decree application, an Advocate Commissioner was appointed and he filed report with plan. Thereafter, inspite of sufficient opportunity given to the petitioner, he did not file any objection and also not proceeded the final decree application and hence, in the final decree application, an exparte decree was passed. To set aside the



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same, he filed an application in I.A.No.798 of 2004. The same was allowed by the learned trial judge in spite of the observation that did not cooperate for the final decree application even after giving sufficient opportunity on payment of cost of Rs.250. Challenging the same, the plaintiffs filed the revision before this Court in C.R.P.(MD).No.654 of 2005. This Court after hearing the review petitioner and others, made detailed discussion in the following Paragraph Nos.8 to 10 and allowed the revision petition:-

8.It is not in dispute that the suit was filed in the year 1980 for partition and separate possession and a preliminary decree was passed on 14.09.1981. No challenge was made to the preliminary decree and hence, it reached finality. In the final decree proceedings, the first respondent received notice and he also engaged an advocate. The learned counsel for the first respondent had taken many adjournments for filing counter to the final decree proceedings for about one year and one month, but admittedly he did not file any counter. After filing of the report by the Advocate Commissioner, the learned Judge adjourned the case for eight hearing to give opportunity to the first respondent to file objections, but, he did not avail that opportunity



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also. However, in the affidavit by the first respondent in support to set aside the exparte participation in the final decree proceedings. The conduct of the first drag the proceedings endlessly.

9.In my opinion, the first respondent has not shown sufficient cause to set aside the final decree passed on 01.10.2004. The learned judge without considering the counter filed by the petitioner any without assigning any reason, allowed the petition. In view o my findings supra, the order passed in I.A.No.798 of 2004 in O.S.No. 155 of 2000 dated 11.03.2005 is set aside.

10.In the result, the civil revision petition is allowed. No costs. Connected C.M.P.(MD).No. 5075 of 2005 is closed. Considering the fact that the suit for partition was filed in the year 1980 and a preliminary decree was passed in the year 1981, the learned trial judge shall dispose of the final decree application as expeditiously as possible preferably within three months from the date of receipt of the order.

Aggrieved over the same, the review petitioner filed this petition.



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3.The grievance of the learned counsel appearing for the petitioner is that no opportunity was provided in the final decree application. Hence, he seeks to allow this application.

4.Per contra, the learned counsel appearing for the respondents/plaintiffs submitted that the matter was only remitted to the trial Court to dispose the final decree application. In the said circumstances, he has opportunity to put forth his defence in the final decree application. In the said circumstances, there was no need to entertain in this review petition.

5. This Court considered the rival submission made by the learned counsel appearing on either side and perused the materials available on record and impugned order.

6.The learned counsel for the petitioner submitted that he has filed petition in I.A.No.800 of 2004 to allot the house property to the review petitioner. The said plea would be considered by the learned trial judge



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along with the final decree application. It is made clear that the Court below passed the final decree after making discussion over the pleadings and submission and the documents filed by the parties. It is made clear, as per para 10 of the impugned order, it is open to the review petitioner to raise all his contention before the Court below during the final decree proceedings and the same is to be considered by the learned trial judge in accordance with law.

7. With this observation, this petition is dismissed with liberty to the petitioner to raise all his grievance in the final decree proceedings. Further, the trial Court is directed to dispose the case within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : *Yes / No*
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To

1. The District Munsif Cum Judicial Magistrate,
Nanguneri.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.,

vsg

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