



C.R.P.(MD).Nos.2800 & 2801 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.03.2024

DELIVERED ON : 04.06.2024

CORAM

THE HON'BLE MR. JUSTICE G.ILANGO VAN

C.R.P.(MD).Nos.2800 & 2801 of 2023

and C.M.P.(MD).No.14613 of 2023

Mrs.Palaniyammal

... Petitioner/Petitioner/8th Defendant

in all petitions

Vs.

1.Valliyammal

2.M.Tamilarasu

3.M.Kanagaraj

... Respondents 1 to 3/Respondents 1 to 3
/Plaintiffs 1 to 3 in all petitions.

4.Ramayee Ammal

5.Thangammal

6.Vembayee

7.R.Kandasamy

8.Anbumani

9.K.Naveenkumar

10.Kaliyammal

... Respondents 4 to 10/Respondents 4 to 10/
Defendants 1 to 7 in all petitions

Common Prayer: Civil Revision Petitions filed under Section 115 of the
Civil Procedure Code, to set aside the order of dismissal dated



C.R.P.(MD).Nos.2800 & 2801 of 2023

25.09.2023 passed in I.A.Nos.6 of 2023 and 7 of 2023 in O.S.No.44 of 2015 on the file of the District Judge, Karur.

For Petitioner : Mrs.S.Vijaya Shanthi

For Respondents : No Appearance

(In all petitions)

COMMON ORDER

These civil revision petition has been filed to set aside the order of dismissal dated 25.09.2023 passed in I.A.Nos.6 of 2023 and 7 of 2023 in O.S.No.44 of 2015 on the file of the District Judge, Karur.

2.The facts in brief:

The suit in O.S.No.44 of 2015 was filed by the respondent herein seeking the relief of partition and separate possession of his share out of 20 equal shares and for cost. The revision petitioner namely Palaniammal is arrayed as 8th defendant in the suit. She remained exparte throughout the proceedings. To set aside the exparte decree and judgment he filed I.A.Nos.6 of 2023 and 7 of 2023. Both were dismissed by the trial Court. Against which these two separate revisions have been preferred.



C.R.P.(MD).Nos.2800 & 2801 of 2023

WEB COPY

3.In I.A.No.6 of 2023, which is the subject matter of C.R.P. (MD).No.2800 of 2023, the following averments are made.

4.The plaintiff is 8th defendant's son-in-law. The 8th defendant got two daughters by name Badmini and Gomathi. The first daughter married with one Chidambaram. The second daughter married the plaintiff. At the time of filing the suit, the plaintiff asked her not to appear in the suit after receiving the summons, since he engaged a counsel for her. Since she was aged, illiterate and cancer patient, she believe the words of the plaintiff. The husband was also aged and innocent. So for all practical purposes they are depending upon the plaintiff. Due to the undertaking given by the plaintiff, she did not engage the Advocate. Only after receiving the notice in the execution proceedings, she came to know about the fraud committed by the plaintiff. So she engaged separate counsel. And came to know that the plaintiff and other defendants are colluding with each other got the decree. Final decree was also passed on 24.10.2019. The commissioner did not serve any notice to her. So there is a delay of 2067 days in filing the petition to set aside the exparte preliminary decree dated 19.07.2017.



C.R.P.(MD).Nos.2800 & 2801 of 2023

WEB COPY

5. Similarly, I.A.No.7 of 2023 is filed to set aside the exparte order in the final decree proceedings. Both were taken up together by the trial Court. The respondent herein filed the counter. Stating that the reasons assigned by the revision petitioner is not a genuine one; he denied that he instructed the revision petitioner not to engage the advocate and appear before the trial Court.

6. Pursuant to the preliminary decree, I.A.No.22 of 2018 was filed for passing the final decree. The commissioner was appointed and commissioner inspected the property and filed a report. Final decree was also passed allotting separate portions to the plaintiff and defendants. Subsequent to the final decree proceedings, E.P.No.12 of 2023 was filed. The revision petitioner appeared through Advocate and prayed time to file counter. Later delivery was ordered. Now it is posted to 20.06.2022 for effecting delivery.

7. Preliminary decree was passed on 19.07.2017 after a lapse of 7 years from the date of preliminary decree and 3 years from the date of final decree, this petition has been filed. After elaborating the dates and



C.R.P.(MD).Nos.2800 & 2801 of 2023

events the trial Court dismissed the applications stating that the reasons assigned by the revision petitioners are not genuine and bonafide. In spite of receipt of notice, the respondent has not chosen to appear and contest the matter. So the petitioner was heard in both the matters.

8.Before going into the factual aspect the main grievance of the revision petitioner is that the calculation of the share made by the plaintiff is not correct. The plaintiff allotted higher share than one which he is entitled for. At the time of hearing, the petitioner has produced share calculation details. According to the calculation details one Ramasamy Gounder had three sons and two daughters namely Muthusamy, Manniappan @ chellappan, Kandasamy, Kaliammal and revision petitioner herein. Muthu Samy and Manniappan died leaving behind the plaintiffs 1 to 3 and the defendants 1 to 3 respectively as their legal heirs and Kandasamy is the 4th defendant, who is the wife and daughter arrayed as defendants 5 and 6.

9.In the plaint, they have calculated their share as if the male descendents are entitled for double share and female descendents are



C.R.P.(MD).Nos.2800 & 2801 of 2023

entitled only for one share each. They have divided the whole property, in to 20 equal shares. This is according to the revision petitioner is *per se* illegal.

10.By pointed out this mistake, the learned counsel for the revision petitioner would submit that an opportunity may be given to the revision petitioner to approach the trial Court for proper amendment and except that she is not interested in contesting the matter on merits. According to her, since she is also ready for partition, but the allotment of shares is not proper, revision must be allowed.

11.No doubt that calculation of share is not proper. Sons and the daughter are equally entitled to get equal share; it must be properly calculated. A mistake was committed not only by the trial Court at the time of passing the preliminary decree, but also at the time of passing final decree. It prejudicely affected the interest of the revision petitioner.

12.Even though the reason assigned by the revision petitioner in not appearing before the trial Court at the time of preliminary decree,



C.R.P.(MD).Nos.2800 & 2801 of 2023

final decree may not be acceptable. But, when there is a mistake on the part of the trial Court in making the calculation of shares, it must be properly corrected, so that ends of justice will be met. Only on the sole ground, I am of the considered view that liberty must be given to the revision petitioner to approach the trial Court to calculate the shares properly. For that limited purpose the preliminary decree may be reopened by the trial Court. Of course there is a huge delay on the part of the revision petitioner. Even though the respondent did not appear, the inconvenience that to be caused to the respondent in getting the preliminary and final decree and appointment of commissioner, payment of fees for the commissioner all those must be properly compensated by the revision petitioner. On that ground there shall be a direction to the petitioner to pay a sum of Rs.10,000/- as cost to the respondent within a period of fifteen days from the date of receipt of a copy of this order. Since the respondent has not appeared before this Court, the amount be deposited before the trial Court or to restore the preliminary decree and calculate the share as per the law and pass preliminary decree. Commissioner may also be directed to revisit the property and suggest allotment of shares as per the preliminary decree to be passed by the trial



C.R.P.(MD).Nos.2800 & 2801 of 2023

Court.

13.With these directions, these revision petitions stand allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

04.06.2024

Index : Yes/No
Internet : Yes/No
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To

- 1.The District Judge, Karur.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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C.R.P.(MD).Nos.2800 & 2801 of 2023

G.ILANGOVAN,J.

TM

PRE-DEIVERY ORDER MADE IN

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