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C.R.P(PD)No.1080 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2025

CORAM :

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD) No.1080 of 2021

and

C.M.P.8486 of 2021

1.Murugesan

2.Deenadayalan
Srinivasan (died)

3.Palani

4.Usharani

5.S.Kumar

6.S.Mohan

7.N.Latha

8.R.Sumathi

9.Aravind

10.Avinash

11.K.Priya

12.Dinesh Kumar

13.Minor Divyasri
represented by her mother and
Guardian K.Priya (11th petitioner)

... Petitioners

(Cause title accepted vide Court order dated
24.03.2021 made in CMP.5634 & 5646 of
2021 in [CRP.SR.19794](#) & 19795 of 2021 (VBSJ)

Vs.



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1.Abirami Ammal
Natarajan (died)
Singaravelu (died)
Kathirvelu (died)

2.Arumugam
3.Shanmugam Mudaliar
4.Ramalingam
5.Palani
6.N.Krishnamoorthy
7.Senthil
8.E.Karunakaran

9.E.Kannan
E.Balakrishnan (died)
S.Kumar (died)
S.Karthikeyan (died)

10.S.Bharathi
11.K.Venkatesan
12.K.Murali

13.Senthivel
Panibai (died)

14.Vittabaiammal

15.Ramanibai
Mohanammal (died)

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to allow the Civil Revision Petition and set aside the order and decretal order, dated 19.02.2020 passed in the [I.A.No.284](#) of 2018 in [I.A.No.56](#) of 2015 in [O.S.No.120](#) of 1990 pending on the file of Principal



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Subordinate Judge, Chengalpattu and pass an order for early disposal of the [I.A.No.56](#) of 2015 by strictly following the Rules laid down under the Tamil Nadu (Case Flow Management in Subordinate Courts) Rules, 2007 within a reasonable time stipulated by this Court.

For Petitioners : M/s.Yuvanthika
for R.Manickavel

For Respondents : [Mr.N.Sivaprakash](#) – R1
RR2 to 5 NRN

ORDER

Three suits for partition have been filed three decades ago. The suits being [O.S.No.88](#) of 1990, [O.S.No.120](#) of 1990 and [O.S.No.2](#) of 1991. [O.S.No.120](#) of 1990 came to be decreed by the learned Principal Subordinate Judge at Chengalpattu on 30.09.2004. [O.S.No.88](#) of 1990 and [O.S.No.2](#) of 1991 came to be dismissed. Three appeals before the learned Principal District Judge in Chengalpattu. They were numbered as [A.S.No.59](#) of 2005, [A.S.No.60](#) of 2005 and [A.S.No.166](#) of 2005 against the judgment and decree in [O.S.No.2](#) of 1991, [O.S.No.120](#) of 1990 and [O.S.No.88](#) of 1990 respectively. Being appeals arising out of the common judgment, the learned Principal District Judge, Chengalpattu clubbed the appeals together and heard them. He dismissed all the appeals on 30.09.2010. Two second appeals were



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preferred to this Court in S.A.No.813 of 2011 and S.A.No.814 of 2011. The said second appeals were dismissed by this Court on 05.08.2011.

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2.As the preliminary decree had attained a finality, the plaintiffs in O.S.No120 of 1990 filed an application for passing of final decree before the learned Principal Subordinate Judge in I.A.No.56 of 2015. The final decree Court ordered notice to all the respondents. The 1st respondent herein remained exparte. Thereafter, she filed an application in I.A.No.284 of 2018 to set aside the exparte order dated 16.07.2018. Notice was ordered in this application. The plaintiffs filed a detailed counter pointing out to the Court that the suit had been decreed and the preliminary decree had attained a finality and no share had been allotted to the petitioner and therefore her application is vexatious.

3.The learned Principal Subordinate Judge by way of the impugned order allowed the application under Order IX Rule 7 filed under final decree application. The reason that the learned Judge has given to allow the application is that she proposes to decide whether the 1st respondent herein / petitioner therein is a trespasser and was allowed to reside in the suit



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property by the 7th defendant. Challenging the same the plaintiffs are on
Revision before me.

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4. I heard Ms.Yuanthika for Mr.R.Manickavel and Mr.N.Sivaprakash
for the 1st respondent.

5.The plea of the 1st respondent is that the exparte order has to be set
aside as she wants to participate in the final decree proceedings. The
preliminary decree has not allotted any share to the 1st respondent herein, for
her to plead an allotment in her favour of a portion of the suit property, or for
purpose of owelty. The preliminary decree has been passed allotting 1/3rd
share to each of the plaintiffs. The final decree Court cannot exceed the
preliminary decree that has been passed. The final decree Court is bound by
the preliminary decree. I fail to understand as to how the final decree Court
can decide whether the 1st respondent is a trespasser or a permissive
occupant. Such an issue is

absolutely alien to the final decree proceedings. The preliminary decree has
attained finality and the buck stops there. All that the final decree Court does

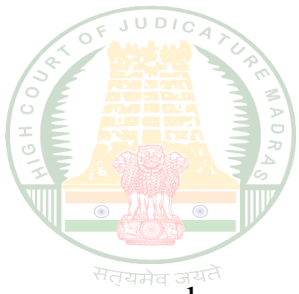


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is to divide the property on the basis of the preliminary decree already passed, and allot a particular share to each of the petitioners. The final decree Court cannot frame an issue which would in effect nullify the preliminary decree. The exercise conducted by the learned Principal Subordinate Judge amounts to overreaching the order of the second appellate Court which has held that the 1st respondent has no share in the property.

6.In the light of the above discussion, this Civil Revision Petition succeeds. The order passed by the learned Subordinate Judge in [I.A.No.284](#) of 2018 in [I.A.No.56](#) of 2015 in [O.S.No.120](#) of 1990 dated 19.02.2020 is set aside. [I.A.No.284](#) of 2018 will stand dismissed.

7.The final decree Court shall take note of the fact that the suit has been pending before the Courts from 1990 onwards. It shall ensure that final decree is passed within a period of four (4) months from the date of receipt of a copy of this order. The learned trial Judge shall ensure that atleast two effective hearings are given to the application during the course of every week. No costs. Consequently, connected miscellaneous petition is closed.



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Index: Yes / No
Neutral Citation

To.

1.The Principal Subordinate Judge
Chengalpattu

V.LAKSHMINARAYANAN, J.

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