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CRP. No.2992 of 2024



IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved on:25.09.2025

Pronounced on:10.10.2025

CORAM

THE Hon'ble MR.JUSTICE P.B.BALAJI

CRP. No.2992 of 2024

1.Gowri
2.Kavitha
3.Jayaprakash
4.Rajamannar

Petitioners

Vs

Kamalambal (Died)
Rama Naidu (Died)
1.Meera
2.Kanchana
3.Rajesh

Respondent

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and final order dated 08.11.2023 passed in I.A. No.314 of 2021 in O.S. No.1107 of 1996, on the file of District Munsif Court, Chengam.

For Petitioners : Mrs.Chitra Maragatham

For Respondents : Mr.G.Srinivasan for R1 & R2
No Appearance for R3



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ORDER

The present revision petition has been filed by the third plaintiff and the legal representatives of the first and second plaintiffs challenging the dismissal of I.A. No.314 of 2021 in O.S. No.1107 of 1996.

2. I have heard Mrs.Chitra Maragatham, learned counsel for the petitioner and Mr.G.Srinivas, learned counsel for the respondents 1 and 2. The third respondent despite service has not chosen to enter appearance.

3. The learned counsel for the petitioner Mrs.Chitra Maragatham would submit that the suit was filed for partition and the first defendant mother, had passed away on 03.06.2014 and inviting my attention to the preliminary decree passed on 09.03.2001, the learned counsel for the petitioner would state that the preliminary decree declares the share of the mother to be 1/5th in the suit property. She would also contend that the said preliminary decree was unsuccessfully challenged in First Appeal in A.S. No.1 of 2001 which came to be dismissed on 16.03.2006 and even the Second Appeal in S.A. No.472 of 2007 against the First Appeal came to be dismissed on 29.06.2012.

4. The plaintiffs have filed I.A. No.590 of 2006 for passing of final decree and pending the same, the first defendant having passed away, an

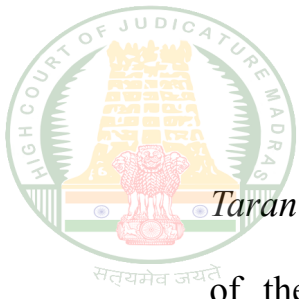


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application was taken out for amendment of the preliminary decree in order to incorporate and include the share of the first defendant, who is succeeded by three daughters, amongst whom the first petitioner is one daughter and other revision petitioners being the legal representatives of the deceased two other daughters. The learned counsel would state that the Trial Court has erroneously dismissed the Application, without noticing the legal position that any number of preliminary decrees can be passed and the parties cannot be driven to a fresh round of litigation which would only increase their agony, besides also amounting to waste of valuable judicial time. She would also rely on the decision of this Court in CRP. NPD. No.966 of 2014, dated 21.11.2016 in *Alagammal and others Vs. Minor Manikandan, S/o.Govindaraj*.

5. Per contra, Mr.G.Srinivasan, learned counsel appearing for the respondent would submit that the petition has been filed invoking Section 152 of the Code of Civil Procedure, 1908 and the said provision can be invoked only when there are clerical or arithmetical errors which alone can be corrected by the Court. He would therefore state that the preliminary decree cannot be amended by taking out an Application under Section 152 of CPC. In this regard, he places reliance on the decisions of the Tripura High Court in *Bharati Nandi Majumder Vs. Arati*



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Taran(Gosh) and others, reported in 2015 (2) TriLR 251 and the decision of the Bombay High Court (Aurangabad Bench) in *Balkrishna Vs. Indubai and others*, reported in 2023 NCBHC-AUG 26678.

6. The learned counsel for the respondent would therefore state that the only remedy open to the petitioners is to file an independent suit insofar as the share of the first defendant is concerned and the preliminary decree cannot be amended.

7. I have carefully considered the submissions advanced by the learned counsel on either side.

8. Admittedly, the suit was filed for partition and separate possession in O.S. No.110 of 1982 and re-numbered as O.S. No.1107 of 1996. The suit was filed by the three daughters of Adhilakshmi Ammal, the first defendant. The daughter, through first wife of the father of the plaintiffs, was arrayed as second defendant and the husband of the second defendant was arrayed as the third defendant. Admittedly, a preliminary decree was passed on 09.03.2001 which entitled the plaintiffs to a 1/5th share each. The Trial Court has also at Paragraph 25, while deciding the issue No.3 framed in that said suit, found that the first defendant's mother



was entitled to a 1/5th share and the second defendant was entitled to 1/5th share with the plaintiffs being entitled to a 1/5th share each. The Trial Court however noticed that both the defendants had not sought for declaring their shares and therefore, the preliminary decree was passed only declaring the plaintiffs 3/5th share in the suit property. The said preliminary decree was challenged in the First Appeal in A.S. No.1 of 2001. However, the preliminary decree came to be confirmed on 16.03.2006.

9. Aggrieved by the dismissal of the said appeal, not satisfied with the concurrent findings, the defendants have taken up the matter in Second Appeal and this Court in S.A. No.472 of 2007 has dismissed the Second Appeal on 29.06.2012. Thereafter, a final decree also came to be passed on 11.02.2013 in I.A. No.590 of 2006. After the passing of the final decree, the first defendant's mother died on 03.06.2014 and since the plaintiffs in the suit were the only legal heirs of the first defendant, they had sought amendment of the preliminary decree to include the share of the first defendant in their respective shares which came to be decreed by the Trial Court. The said Application has been dismissed by the Trial Court accepting the contentions of the respondent that the final decree



having been passed, the same cannot be revisited and that too under

Applications filed invoking Sections 151, 152 and 153 A CPC.

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10. This Court in *Alagammal's* case (referred herein supra), after discussing the case law on this subject, held that an amendment of a preliminary decree is permissible and that there is no prohibition in the Code of Civil Procedure even for passing a second preliminary decree in the event of circumstances warranting so. However that was a case where, this Court found that even after the preliminary decree has been passed and had become final, no final decree application was taken out by any of the parties. Under such circumstances, this Court held that there is no impediment for passing more than one preliminary decree. However, this Court in Paragraph No.10 has categorically held that modification of preliminary decree or passing of more than one preliminary decree, prior to passing of finally decree can also be done. Therefore, the present case where final decree has admittedly been passed stands on a different footing.

11. In *Bharati Nandi Majumder's* case (referred herein supra), the Tripura High Court was concerned with the maintainability of an Application for altering the preliminary decree under Section 152 of



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CPC. On facts, the Tripura High Court held that the findings of the preliminary decree cannot be altered indirectly and the proper recourse for any aggrieved party was to file an Appeal or Review before the Competent Court. The facts of this case also may not be helpful to decide the present revision, since it was a case where, without challenging the preliminary decree, amendment was sought for to the preliminary decree and the Court found that it was a challenge to the preliminary decree itself and the same was not permissible, that too by invoking Section 151 of CPC.

12. The Bombay High Court again referring to Section 152 of CPC and its scope held that under Section 152 of CPC, only clerical or arithmetical mistakes or accidental errors can be corrected and decree which has become final and satisfied cannot be reopened. The Bombay High Court held that on satisfaction of the decree, a decree is to be considered as a Dead decree and it cannot be re-opened or amended under Section 152 of the CPC. There again it was a case where the first respondent sought for amendment of the preliminary decree on the ground of her entitlement arising due to death of one of the parties to the suit, the same having been excluded by the Trial Court and the Appellate Courts.



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13. On facts, it is seen that the decree had been satisfied by allotting shares to the parties, by metes and bounds and the High Court held that thereafter, it is not permissible for amending the decree in order to include the share of one of the deceased persons which was omitted to be included in the preliminary decree, by both the Trial Court as well as the First Appellate Court. The ratio laid down by the Bombay High Court, in my considered opinion will have a considerable bearing on the facts of the present case. Even before the Bombay High Court, a final decree had been passed and the Bombay High Court termed the decree as a “Dead decree” and held that there can be no re-opening of such a decree under the guise of correction or modification.

14. In the facts of the present case as well, I find that the final decree has been passed as early as on 11.12.2013. Admittedly, on that day, the first defendant was alive and the final decree allots the 3/5th share of the plaintiff in all the suit items, by metes and bounds. The rights of the parties have therefore stood crystalised with the passing of the final decree. Therefore, after the final decree has been passed and the parties have been put in separate possession and enjoyment of their respective shares, it is no longer open to the parties to seek re-opening the decree,

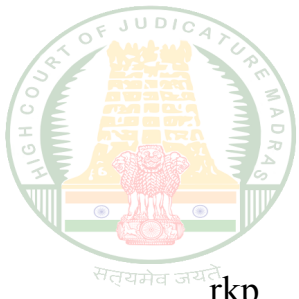


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more specifically the preliminary decree in order to seek enhancement of the shares, to incorporate the share of the deceased first defendant, who admittedly died after the passing of the final decree alone.

15. In fact, the Trial Court has also found that the first defendant has not paid Court fee for declaring her 1/5th share. Therefore, the mere observation by the Trial Court that the defendants are entitled to 1/5th share each in the absence of their share being declared in the preliminary decree, as well as being demarcated in the final decree proceedings, will not entitle the plaintiffs, to seek for amendment of the preliminary decree. Therefore, I do not find any error or infirmity in the order of the Trial Court dismissing the Application seeking amendment of the preliminary decree. However, the dismissal of the said Application and confirmation of the same in this revision petition shall not come in the way of the petitioners working out their rights independently, in a manner known to law.

16. Accordingly, this Civil Revision Petition is dismissed. No costs.



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rkp

Index : Yes

Internet : Yes

To:

The District Munsif,

Chengam.

P.B.BALAJI, J.,

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Pre-delivery order in
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