



C.R.P.No.1480 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.07.2025

Pronounced on : 23.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.1480 of 2025

and

C.M.P.No.8672 of 2025

C.Baskaran

... Petitioner

Vs.

T.J.Chinnappa Reddy (died)

1.T.C.Anandan

2.C.Ramesh

3.T.C.Thirumal

4.T.C.Selvam

5.Geetha

6.Jayammal

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order, dated 18.11.2024, made in I.A.No.1 of 2022 in O.S.No.46 of 2020 on the file of the Additional Subordinate Court, Vellore.



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For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mr.M.Venkatakrisnan

For R1 to R5 : Mr.R.Rajarajan

ORDER

Aggrieved over the final decree passed by the Additional Subordinate Judge, Vellore, in I.A.No.1 of 2022 in O.S.No.46 of 2010, dated 18.11.2024, the present revision has been filed by the plaintiff in the suit.

2.The following facts are necessary for the disposal of this revision :

2.1.The revision petitioner, being the plaintiff, filed the suit in O.S.No.46 of 2020 as against his father, brothers and sisters for partition and allotment of 1/7th share in the suit A and B Schedule properties. According to the plaintiff, the suit properties are ancestral properties of plaintiff's grandfather. It is the case of the plaintiff that, in Item No.1 of the A-Schedule property shown in the plaint, he is running a brick kiln. The said item comprises of 1.73 Acres. According to the plaintiff, he has invested a huge sum to develop his business and obtained electricity service connection, etc. However, the defendants are trying to vacate the plaintiff



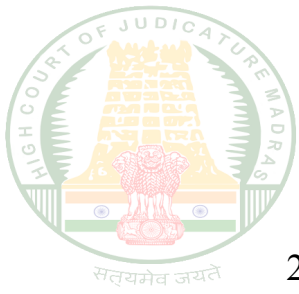
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from the properties and also trying to alienate the properties on their own volition. Hence, he filed the suit for partition.

2.2.In the written statement, the 1st defendant has taken a stand that the suit A-Schedule properties and other properties were allotted to him in partition between his father, himself and brothers. It is his contention that the properties are not joint family properties and therefore, he disputed the claim for partition. The 5th defendant, in his written statement, has admitted that, in Item No.1 of the A-Schedule property, the plaintiff has been carrying on a country brick kiln. The 5th defendant contested the suit.

2.3.A preliminary decree has been passed by the trial Court on 27.09.2021, for dividing the suit properties in 49 shares and allotting 8 such shares to the plaintiff and also held that the defendants 2 to 6 are also entitled to 8/49 share and that the 7th defendant is entitled to 1/49 share in the suit A and B Schedule properties. The decree and judgment in the suit has reached finality.



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2.4.Final decree application has been filed by the plaintiff in I.A.No.1 of 2022. An Advocate Commissioner was appointed by the trial Court for division of properties and to suggest the mode of division. The Commissioner has filed a report, suggesting the mode of division, wherein, he has suggested that an extent of 24.8 Cents in Item No.1 of the A-Schedule property can be allotted to the plaintiff and he has also suggested for the allotment of area in respect of other properties in favour of plaintiff and also other defendants. Since the plaintiff was allotted a lesser extent in Item No.1 of the A-Schedule property, an objection was taken out by the plaintiff stating that he should be allotted with the entire Item No.1 of the A-Schedule property, wherein he is running the brick kiln. However, the trial Court did not accept the objections of the plaintiff and passed the final decree by order dated 18.11.2024, as against which, the present revision has been filed by the plaintiff.

3.Mr.V.Raghavachari, learned Senior Counsel appearing for the revision petitioner/plaintiff, would point out that, though final decree has been passed, as the trial Court has accepted the Commissioner's report, still the petitioner can maintain a revision challenging the order of the trial



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Court. In support of his submissions, he has relied upon the judgment of the Patna High Court in *Uma Kant and others v. Shital Thakur and others* reported in **1995 (1) BLJR 641**. Further, it is his contention that the 5th defendant, in his written statement, has admitted that he has no objection for allotment of the land where the brick kiln is situated to the plaintiff, subject to the value of each share being equally determined. Having taken such a plea, now insisting on the equal share in Item No.1 of the A-Schedule property is not proper. According to the learned Senior Counsel, in Item No.1 of the A-Schedule property, the brick kiln had been independently set up by the plaintiff. The learned Senior Counsel would submit that, for that Item No.1 of the A-Schedule property, the revision petitioner/plaintiff is, in fact, ready to forego his share in all other items of the properties. Therefore, he would submit that the trial Court ought to have considered the objections raised by the petitioner and the allotment made by the trial Court accepting the Commissioner's report is not proper.

4. Whereas, Mr.R.Rajarajan, learned counsel appearing for the respondents 1 to 5, would vehemently contend that a revision is not maintainable as against the final decree already passed by the trial Court.



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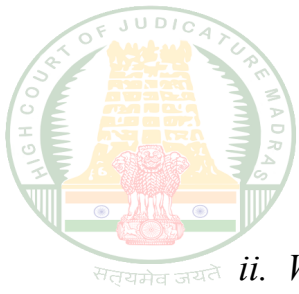
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Once a final decree is passed, only an appeal is maintainable under Section 96 CPC. Therefore, the present revision is not maintainable. Further, it is his contention that, merely because one of the co-owners has set up a brick kiln in one of the items of the suit properties, he cannot lay an independent claim over the entire area. According to him, Item No.1 of the A-Schedule property is situated very near to the main road and access to the said property is easily available. Whereas, for the other properties situated beyond the A-Schedule property, there is no proper access. It is his contention that the Commissioner has, in fact, taking note of the fact that the brick kiln was situated only in lesser extent, has suggested for allotment of that extent to the plaintiff. However, the claim of the plaintiff for the entire area is not proper. Therefore, he prays for dismissal of the revision.

5.I have perused the entire materials available on record.

6.Now, the points that arise for consideration in this revision are as follows :

- i. *Whether a revision is maintainable to challenge the final decree already passed by the trial Court ?*



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ii. *Whether the allotment made by the trial Court is proper or the same is liable to interfered with ?*

Point No.(ii) :

7.The suit is laid for partition by the plaintiff claiming his 1/7th share in the suit properties. Though the claim of the plaintiff was originally denied by the 1st defendant/father during trial, the defendants 1 to 4 and 6 have filed a memo before the trial Court for allotment of 1/7th share to the plaintiff and the 5th defendant has also filed a written statement stating that he has no objections for allotting the area to the plaintiff where he runs his brick kiln, subject to the value of each share being equally determined. Thereafter, a preliminary decree has been passed and the same has reached finality.

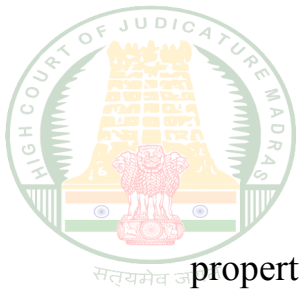
8.An Advocate Commissioner has been appointed and he has filed a report, wherein, taking note of the fact that brick kiln was situated in lesser area in Item No.1 of the A-Schedule property, he has suggested for allotment of that area to the plaintiff. However, now, the plaintiff wants to lay a claim over the entire extent of 1.73 Acres situated in the particular



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Survey Number where the brick kiln is set up. To that effect, he has raised objections before the trial Court. Whereas, the trial Court has rejected the objections raised by the plaintiff and passed the final decree, allotting the area where the brick kiln was set up, to the plaintiff, and the remaining area to the other defendants as per their entitlement.

9.The contention of the revision petitioner/plaintiff that he is entitled to the entire extent of 1.73 Acres cannot be countenanced for the simple reason that, merely because one of the co-owners was allowed and permitted to do his independent business in one particular Item of the property, he cannot make a demand that only that particular property alone should be allotted to him. It is only a country brick kiln set up by him, that too, not in the entire extent of 1.73 Acres. The report of the Commissioner in the final decree proceedings indicates that, after giving common access to all the co-owners, an extent of 24.8 Cents in Item No.1 of the A-Schedule property was allotted to the plaintiff where the brick kiln is situated and other lands have also been allotted to him. Therefore, merely because the plaintiff is running a business in a lesser extent in a particular item of the suit properties, he cannot demand the entire larger extent of that item of



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property to be allotted to him. If such claim is accepted, it will be, in fact, an unequal allotment to other co-owners who have equal right in the suit properties. Therefore the contention of the learned Senior Counsel cannot be countenanced in this regard. ***Point No.(ii) is answered against the revision petitioner/plaintiff.***

Point No.(i) :

10.Insofar as the maintainability of a revision as against the final decree is concerned, it is not in dispute that final decree has already been passed as early as on 18.11.2024 in I.A.No.1 of 2022. Once the final decree has been passed, the remedy lies elsewhere to challenge the final decree. A regular appeal under Section 96 CPC alone is maintainable to challenge the final decree. When a decree conclusively determines the rights of the parties with regard to the matters in controversy in the suit, either it may be preliminary or final, only an appeal will lie as against such decree and judgment. As per Section 96 CPC, save where otherwise expressly provided in the body of the Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from



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the decisions of such Court. Therefore, once final decree has been passed, a revision is not maintainable. Though the judgment of the Patna High Court in *Uma Kant and others v. Shital Thakur and others (supra)* was relied upon by the learned Senior Counsel to contend that the revision is still maintainable challenging the decision of the trial Court accepting the Commissioner's report, it is relevant to note that the above judgment cannot be applied mechanically to the facts of this case. In the case therein, final decree has not been passed and only the report of the Pleader Commissioner was challenged. In that context, a revision was entertained. Whereas, in the given case, final decree has been passed. The objections of the plaintiff were negatived by the trial Court and thereafter, final decree has been passed. In such a case, only an appeal is maintainable, not a revision. In such view of the matter, the present revision is not maintainable. ***Point No.(i) is answered against the revision petitioner.***

11.As held above, this Court is of the view that the final decree passed by the trial Court cannot be said to be an unequal distribution of shares to all the co-owners. Therefore, the same does not require any interference. Hence, I do not find any merit in this revision.



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

Consequently, connected miscellaneous petition is closed.

23.07.2025

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Internet : Yes

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Additional Subordinate Judge,
Vellore.

2. The Section Officer,
VR Section,
High Court, Madras.

N. SATHISH KUMAR, J.



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