



CRP(NPD) No.4021 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 12.06.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

CRP(NPD) No.4021 of 2024

and

CMP No.22111 of 2024

Arunachalam

... Petitioner

Vs.

1. Muthulakshmi

2. Prabhu

3. Prema

Karuppayammal (dead)

4. Sarasayal @ Sarasal

5. Thangamani @ Sivagami

... Respondents

Prayer : Civil Revision petition has been filed under Section 115 of CPC to set aside the fair and decretal order dated 23.04.2024 passed in I.A.No.01 of 2021 in O.S.No.161 of 1986 on the file of the Sub Court, Gobichettipalayam, Erode District.



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CRP(NPD) No.4021 of 2024

For Petitioner : Mr. K. Govi Ganesan

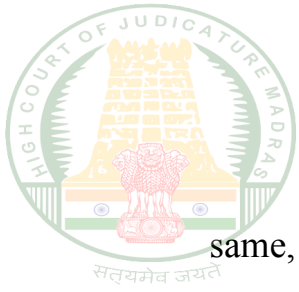
For Respondents : Mr. P.R.Balasubramanian,
for R1 to R3

: Mr. A.Veerassamy,
For R4 & R5

ORDER

Challenge has been made to the order of the Sub Court, Gobichettipalayam, in I.A.No.01 of 2021 in O.S.No.161 of 1986 in appointing a commissioner to divide the shares allotted to the 4th defendant in the said suit to be noted that the petitioners are legal heirs of the 4th defendant in the suit.

2. The revision petitioner is the 2nd plaintiff in the suit in O.S.No.161 of 1986 on the file of the District Munsif Court, Gobichettipalayam, for partition of the suit property and the same was decreed on 25.04.1977. Against which, appeal was filed in A.S.No.208 of 1997 before the Sub Court, Gobichettipalayam and the learned Judge vide judgment dated 06.02.1998 partly allowed the appeal. Challenging the



CRP(NPD) No.4021 of 2024

same, S.A.Nos.1022 of 1998 was filed before this Court and the same was dismissed on 26.09.2019.

3. When the Second Appeal was pending before this Court, the 4th defendant in the suit, viz., Ramasami, died. The legal heirs of the deceased 4th defendant were impleaded in the said Appeal as respondents 4 to 6. After dismissal of the Second Appeals, they filed an application in I.A.No.01 of 2021 in O.S.No.161 of 1986 before the Sub Court, Gobichettipalayam, for appointment of an advocate commissioner to divide the suit properties and allot 58 cents to them and the same was allowed on 23.04.2024. Aggrieved over the same, the present revision has been filed.

4. Challenge has been made before this Court mainly on the ground that the First Appellate Court in A.S.No.208 of 1997 has observed that the 4th defendant is not entitled to get any share as certain properties had already been allotted pursuant to an earlier suit in O.S.No.830 of 1970 and the said findings were also confirmed by this Court in the Section Appeal

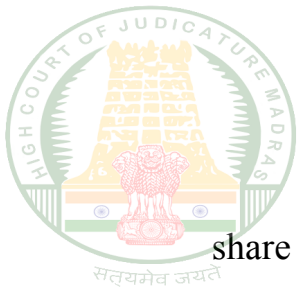


CRP(NPD) No.4021 of 2024

in S.A.No.1022 of 1998 and hence, the application filed by the legal heirs of the deceased 4th defendant, viz., Ramasamy, for appointment of advocate commissioner to allot the shares as indicated in the original suit is not maintainable.

5. I have heard the learned counsel for the respondent and gone through the entire materials.

6. In fact, in the original suit, a preliminary decree was passed to divide the suit properties in 16 shares. Out of which, 5 shares were allotted to the plaintiffs and 58 cents was allotted to the 4th defendant in the entire suit property. Apart from that, 1/4 share of the first defendant was allotted to the 4th defendant. On Appeal, the Appellate Court has set aside the allotment of 1/4 share from the first defendant's share alone, but not the share allotted in respect of 58 cents. Therefore, merely on some observations by the Court that pursuant to the earlier judgment and decree, the 4th defendant was already allotted share, that will not affect the 58 cents allotted to fourth defendant. Only with regard to 1/4 share from the



CRP(NPD) No.4021 of 2024

share of first defendant alone is modified. Not the original allotment of 58 cents as per the judgment and decree of the Trial Court.

7. Now, the commissioner application has been filed only to divide 58 cents alone. Therefore, this Court does not find any infirmity in the order passed by the Trial Court. In fact, the legal heirs of the 4th defendant in the suit, viz., the respondents 1 to 3 herein are entitled for 58 cents in the entire suit properties. Hence, I do not find any merits in this revision petition and the same is liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The Trial Court shall proceed with the matter and dispose the Execution Petition as expeditiously as possible, preferably, within a period of four(4) months from the date of receipt of a copy of this order.

12.06.2025

mrp

To

1. The Sub Court, Gobichettipalayam,
Erode District.

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CRP(NPD) No.4021 of 2024

N. SATHISH KUMAR, J.

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CRP(NPD) No.4021 of 2024

12.06.2025