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CRP Nos.387 & 388 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRP Nos.387 & 388 of 2025

1. K.V.Swarna

2. C.Padmasri

Petitioner(s) in all CRPs

Vs

R.V.Venkataswamy [deceased]

1. R.V.Subramania Prasad

R.V.Sathyavathi [deceased]

2. R.V.Lakshmanaprumal

3. R.V.Venkataramaiah

4. R.V.Gopalakrishnan

5. R.V.Srinivasan

Respondents 2 to 5 are given up

Mr.Poonamchand Bakeria [deceased]

Umrao Devi Boakeria [deceased]

6. Prakash Chank Boakeria

7. Pradeep Kumar Bokeria

8. Praveen Kumar Boakeria

9. Prasant Boakeria

10. Nirmala Singhee

11. Pramila Giria

12. Vineet Kumar Boakeria

... Respondents in both CRPs



COMMON PRAYER : Petitions filed under section 115 of Code of Civil Procedure to set aside the order dated 29-10-2024 made in I.A.Nos.4793 & 4795 of 2017 in O.S.Nos.4573 of 1997 on the file of the XI Assistant Court, City Civil Court Chennai respectively by allowing these Civil Revision Petitions.

For Petitioner(s): Mr.N.Nagu Shah

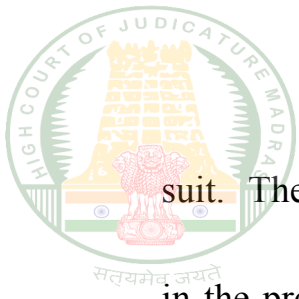
For Respondents : Mr.V.G.Sureshkumar – R1

R2 to R12 No appearance

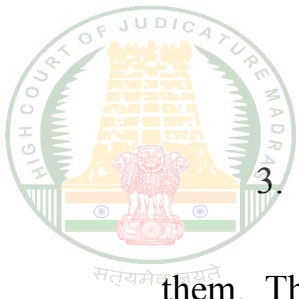
COMMON ORDER

Challenging the Order of the trial Court closing the application filed for passing of final decree and appointment of Advocate Commissioner and for deciding mesne profits, the present Civil Revision Petitions have been filed.

2. The suit has been filed by the father of the revision petitioners against his brother and his family members in respect of the property to an extent of 2 grounds and 1375 sq.ft. During the pendency of the suit, the first defendant had sold the property to the 8th defendant. He was also impleaded as a party in the

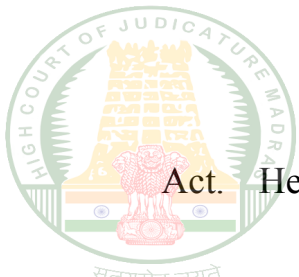


suit. The 8th defendant having purchased the property had put up construction in the property. However, preliminary decree has been passed for partition of the suit properties. After the death of the plaintiff, his legal heirs had filed an application to pass a final decree on the basis of the preliminary decree which had reached finality, since the appeal filed by the 8th defendant in A.S.No.21 of 2015 has also been dismissed. Therefore, the decree and judgment passed in O.S.No.4573 of 1997 had reached finality. During the final decree proceedings, an Advocate Commissioner was originally appointed in I.A.No.4794 of 2017 and he had also filed two reports suggesting mode of division of the properties. When the matter stood thus, the applications in I.A.Nos.4793 and 4795 of 2017 for final decree and fixation of mesne profits have been closed by the trial Court on the ground that the decree is only for vacant site and now a building has been put up by the 8th defendant. Therefore, the applications have been closed with liberty to the petitioner to reopen the petitions after taking steps to restore the suit 'A' schedule property to its original status as mentioned in the preliminary decree. Challenging the same, the present Civil Revision Petitions have been filed.



3. Despite notice served to the respondents 2 to 12, none appeared for them. The first defendant has entered appearance through his counsel and submitted that he has no objection in allowing these revision petitions.

4. At the outset, this Court is of the view that the very Order of the trial Court cannot be sustained in the eye of law. When the suit itself has been filed for partition of the suit properties by one of the brother and during the pendency of the suit, the first defendant had sold the property to the 8th defendant, such sale during the pendency of the suit is always subject to the result of the suit. The suit has been decreed for partition. Subsequent purchaser at the most is entitled to the property which his vendor is entitled to. The purchase of the entire property by the 8th defendant during the pendency of the suit itself is not valid in the eye of law. He will not get title in respect of others share. Having purchased the undivided share he is not entitled to claim possession of the entire property. His remedy is only to seek for partition. Whereas he had put up construction even during the pendency of the suit. Such construction cannot be said to be bonafidely made even as per Section 55 of the Transfer of Property



Act. He cannot claim improvement also since he has no title to the entire property. In such view of the matter, at the most he can claim in respect of his share in the building and he can seek equity for allotment in the final decree in respect of his vendor. He cannot be said to bonafidely made an improvement or the construction in the entire property for which he has no title at all. In such view of the matter, the trial Court closing the applications, in view of this Court is nothing but perverse. The trial Court ought to have conducted enquiry and decided the final decree application and the application filed to mesne profits as per law.

5. Accordingly, these Civil Revision Petitions are allowed and Order of the trial Court in I.A.Nos.4793 and 4795 of 2017 are set aside. The trial Court is directed to conduct enquiry in the above applications and pass Orders on merits within a period of four months from the date receipt of a copy of this Order. No costs.

07.08.2025



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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To,

The XI Assistant Judge,
City Civil Court, Chennai.



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