



CRP(MD). No.1145 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 04/06/2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRP (PD) (MD). No.1145 of 2018

D.Malathi

... Petitioner

Vs

1.Chinnamuthu

2.A.Balakrishnan

3.P.Vallinayagam

4.N.T.Sivasubramanian

5.Manthiramoorthy

6.K.Balasubramanian

Seranthaiah Pillai (Died)

MuthuPillai (Died)

7.Rajam Veeramani

8.Kayathri

9.Eswar

10.Mookandi Seranthaiah Pillai



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11.Muthammal

12.Maharajan

13.Sivaperumal

14.Petchimuthu

15.Meenakshi

16.Uganda Perumal Pillai

17.Krishnasamy

18.Perumal

19.Chelladurai

... Respondents

PRAYER :-Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.08.2017 passed in IA No.61 of 2017 in I.A.No.247 of 2007 in O.S.No. 311 of 1996 on the file of the Additional District Munsif, Thoothukudi.

For Petitioner : Mr.N.MuthuVijayan

For Respondents : Mr.S.Ramesh for R1 to R3

No appearance for R4,R10,14,15, 19

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 18.08.2017 passed in IA No.61 of 2017 in I.A.No.247 of 2007 in O.S.No.311 of 1996 on the file of the Additional District Munsif, Thoothukudi.



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2. The case of the petitioner is that the petitioner is the legal heir of the first plaintiff. After the death of the first plaintiff, she has been added as a legal heir of her father and other legal heirs filed a suit for partition against the respondents claiming 1.91 ½ cents and on the basis of Ex.A1 to Ex.49, the trial Court arrived at a conclusion that the petitioner/5th plaintiff and the plaintiffs are entitled for 1.11½ acres towards their share after deducting 35 cents, which was acquired for highways.

3. The respondents herein filed a written statement before the trial Court stating that 1.28 acres, which is the subject matter of the civil suit was purchased by their father Arumugam Pillai, out of which, through sale deed dated 09.01.1984 from Seranthaiah Pillai 38 cents, from Pitchai Pillai vide sale deed dated 07.05.1984 35 cents, Eswar Moorthia Pillai vide sale deed dated 05.03.1984 15 cents and from Muthu Pillai vide sale deed dated 16.03.1984 40 cents and thus the total extent of 1.28 acres. The respondents 1 to 3/defendants 1 to 3 jointly enjoyed the property to an extent of 1.28 acres, in which, the petitioner/plaintiff is not entitled to claim 1.28 acres and for non payment of Court fee, in counter claim,



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since their share was not allotted at the time of preliminary decree, against which, the respondents filed IA No.315/2016 for payment of Court fee and the same was rejected. Challenging the same, the respondents filed a Civil Revision Petition before this Court in CRP (MD) No.2541/2016 and this Court vide its order, dated 21.04.2017 issued a direction to the trial Court to dispose of IA No.61/2017 and permitted the revision petitioners to pay the required Court fee and thereafter consider their case on merits and pass appropriate orders. This Court only issued a direction for payment of Court fee and decide the matter on its own merits and the respondents are not entitled to make any claim even on payment of Court fee. There is no proper adjudication with regard to the entitlement of 1.28 acres admittedly purchased. However, without considering the same, the trial Court allowed the petition, against which, the petitioner is before this Court.

4. Per contra, the learned counsel for the respondents would submit that even a bare perusal of the plaint, it is clear that their claim is only in respect of 1.91½ acres and after adjudication, the trial Court allotted an extent of 1.11½ acres after deducting 35%, which was acquired for



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highways department. Even the petitioner/plaintiff did not make any claim in respect of 1.28 acres and if at all they want to claim 1.28 acres, there must be an averment to that effect in the plaint and in the absence of the same, there is a remedy available to challenge the preliminary decree. However, in the present case, 1.28 acres is purchased by the respondents' father namely, Arumugam Pillai from 3 persons on different sale deeds on different dates and it was also marked as Exs.B1 to B4 and the same was not disputed by the petitioner/plaintiff. Even then, adjudicating the issue before this Court for non payment of Court fee for allotment of the share in respect of 1.91 acres, which was purchased by the respondents' father in which the petitioner/plaintiff has no right and when there is no claim in the plaint and in the absence of any claim in the plaint, filing the Civil Revision Petition questioning the share allotted by the trial Court for payment of Court fee, as per the direction of this Court is not at all sustainable. For all these reasons, he prays for dismissal of the Civil Revision Petition.

5. I have considered the submissions of both sides and perused the materials available on record.



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6. From the pleadings, it is clear that the claim of the petitioner is only in respect of 1.91½ acres and the trial Court has allotted an extent of 1.11½ acres after deducting 35%, which was acquired for Highways Department. When there is no claim in respect of 1.28 acres and in the absence of any averment in the plaint, filing the Civil Revision Petition questioning the share allotted by the trial Court for payment of Court fee, as per the direction of this Court is not at all sustainable. If at all the petitioner is aggrieved, she has a remedy to challenge the preliminary decree.

8. Though the fact stated thus, after dictating the order, the learned counsel for the respondents fairly conceded that in the event of settlement of the dispute between the parties, the trial Court may be directed to pass a final decree on the basis of the preliminary decree and in terms of order made in IA No.61/2017.



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9. Accordingly, the Civil Revision Petition is dismissed and the trial Court is directed to pass a final decree on the basis of the preliminary decree and also in terms of the order in IA No.61/2017. No costs.

04.06.2025

NCC : Yes/No
Index : Yes/No
RR

TO

1.The Additional District Munsif, Thoothukudi.

2.VR Section

Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI,J

RR

**ORDER
IN
CRP(MD) (NPD) No.1145 of 2018**

Date : 04/06/2025