



C.R.P(MD)No.666 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.10.2024

Delivered On : **27.01.2025**

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.666 of 2020

1.Thangadurai
2.Annalakshmi

... Revision Petitioners

Vs.

Thangasamy Nadar (Died)
1.Rajapushpam
2.Muthulakshmi
3.Muthusamy
4.Muthuselvi
5.Muthukumar
6.Muthuraj
Thangarathinam (Died)
Thangapandi (Died)
7.Jeyakodi
8.Thangalingam
9.Kasilingam
10.Sakthilingam
11.Lingakani

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order, dated 12.12.2018, made in E.A.No.33 of 2016 in E.P.No.11 of 2012 in O.S.No.151 of 2005 (O.S.No.213 of 1991) on the file of the District Munsif Court, Srivaikundam.



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For Petitioners : Mr.V.Shathurthi Raja
For Mr.S.Kadarkarai
For Respondents 1 to 6 : Mr.B.Rajesh Saravanan
For Respondents 7 to 11 : Given Up

ORDER

This Civil Revision Petition is filed, to set aside the fair and decreetal order, dated 12.12.2018, made in E.A.No.33 of 2016 in E.P.No.11 of 2012 in O.S.No.151 of 2005 (O.S.No.213 of 1991) on the file of the District Munsif Court, Srivaikundam.

2.For the sake of clarity and convenience, the parties are hereinafter referred as per ranking in the Original Suit.

3.Originally, the suit in O.S.No.213 of 1991 came to be filed seeking partition of the suit schedule property before the District Munsif Court, Srivaikundam. The same was renumbered as O.S.No.151 of 2005. The preliminary decree in the aforesaid suit was passed on 18.06.1999. Thereafter, the final decree was also passed on 06.07.2006. Following which, an Execution Petition came to be filed in E.P.No.11 of 2012 to give effect to the final decree passed by the trial court. However, the defendants filed E.A.No.33 of 2016, seeking to dismiss the Execution Petition as the same is inexecutable as far as



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the 12th schedule of the suit schedule property. In terms of Item No.12 of the plaintiff precisely neither extent nor survey number or the details of boundary except as to the fact that the same is a house site situated at Melatheru, Sivakalai Village, Srivankuntam Taluk has been mentioned. Hence, the said E.A.No.33 of 2016 came to be filed by the sole defendant.

4.Due to the discrepancies between the report of the Commissioner and the report of Amin, who had returned the warrant as inexecutable, due to the availability of only 20 cents as per lie contrary to the report of the Commissioner as per which Item No.12 of the suit schedule property consisted an area of one acre and fifteen cents, the trial Court had proceeded to conclude that the final decree passed by the trial Court as far as Item No.12 of the suit schedule is inexecutable and on that basis, the trial Court allowed E.A.No.33 of 2016, making an observation that 12th item of suit schedule property is not available as per the decree i.e., making the decree inexecutable. Accordingly, E.P.No.11 of 2012 was also closed on the same day on which E.A. was allowed i.e., on 12.12.2018.

5.The learned counsel appearing for the Plaintiff Nos.1 and 3, Mr.V.Shathurthi Raja for Mr.S.Kadarkarai, vehemently submitted that the



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Execution Court cannot go beyond the decree and when the trial Court has proceeded to pass a final decree declaring that the plaintiffs are entitled to 3/4th share and the sole defendant was entitled to 1/4th share with respect to every item of the suit schedule property, the Execution Court ought to have proceeded to execute the decree with respect to the 12th item as far as the available area of 20 cents based on the final decree. Having not done the same, the impugned order is bad in the eye of law and sought for quashing the same and the learned counsel requested to remand the matter back to the Execution Court for the purpose of effecting partition in terms of the final decree.

6.The learned counsel appearing for the Defendants submitted that having not challenged the order passed by the Execution Court in E.P.No.11 of 2012, dated 12.12.2018, the petitioner is not entitled to seek for reopening the Execution Petition. That apart, when the plaintiff Nos.1 and 3 had failed to properly plead the extent of 12th item of the suit property finding fault with the order of the Execution Court is not permissible.

7.This Court is of the considered view that the Execution Court ought to have executed the final decree and facilitated the respective litigants to be allotted with the respective shares as decreed in the final decree and obviously,



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in such situation even the defendants would be benefited if 12th item of the suit property is further partitioned by being allotted with their respective shares, I am of the considered view that the Execution Court ought to have considered that the respondents/petitioners preferred an Appeal as against the Preliminary Decree passed in O.S.No.231 of 1991 in A.S.No.104 of 2001 and the same was dismissed by the Appellate Court. However, the respondents did not prefer any Second Appeal as against the same thereafter and thus, the final decree passed in I.A.No.779 of 2005 in O.S.No.151 of 2005 (earlier number O.S.No.231 of 1991), will be binding on the respondents and the learned Execution Court has no power to enlarge its scope against the final decree proceedings. The only reason for the learned Execution Court to conclude that in terms of Ex.P2, there is a Commissioner's report Item No.12 of the plaint schedule property with survey No.814/40, was comprised in an extent of one acre and 15 cents. Though according to his report, the plaintiff is entitled to 1/4th share, that is, 28.75 cents and the defendants 1 to 3 are entitled to 3/4th share, that is, 86.25 cents, as per lie in the aforesaid survey number, only 20 cents land is available. Recording that, admittedly as on 12.12.2018, as far as item No.12 of the plaint schedule property is concerned, an area of 60 cents is not available on earth, as per lie, the learned Execution Court concluded that the decree is inexecutable with regard to the plaint schedule item No.12. Such an exercise is not sustainable



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and this Court is of the considered view that in the circumstances, in which the First Appeal filed by the defendants in A.S.No.104 of 2001, came to be dismissed and thereafter, no Second Appeal was further preferred by the defendants, the final decree passed by the learned Trial Court had become final and hence, the learned Execution Court ought to have proceeded to execute the final decree as far as the item No.12 of the plaint schedule properties is concerned, by proceeding to effect partition with respect to the available 20 cents of land in survey No.814/40 by demarking an area of 1/4th share in the available 20 cents land to the plaintiff and the remaining 3/4th share to the defendants 1 to 3 respectively.

8. That apart, the final decree proceedings had attained its finality upon the verdict passed in I.A.No.779 of 2005, in which the defendants have actively participated and accepted the respective shares allotted to them without any objection, including their share. In such circumstances, the belated objection raised in E.A.No.33 of 2016, seeking to set aside the final decree in I.A.No.779 of 2005 in O.S.No.151 of 2005, is nothing but a clear abuse of legal process. Hence, the fair and decreetal order dated 12.12.2018 made in E.A.No.33 of 2016 in the E.P.No.11 of 2012 in O.S.No.151 of 2005 (earlier number O.S.No. 231 of 1991) on the file of the District Munsif Court, Srivaikundam, is hereby set



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aside and the matter is remanded back to the learned Execution Court to effect the partition with respect to item No.12 of the plaint schedule property, in terms of the final decree, as far as the available property, as per lie, that is, an area of 20 cents land, comprised in Survey No.814/40.

9.Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs.

27.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Mrn

To

1.The District Musnif,
Srivaikundam.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

Order made in
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