

Chithra Vs. Chinnammal (died) and Others

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Court : Chennai

Decided On : Jan-25-2017

Judge : The Honourable Ms. Justice R. Mala

Appeal No. : C.R.P (NPD). No. 1768 of 2016 & C.M.P. No. 9350 of 2016

Appellant : Chithra

Respondent : Chinnammal (died) and Others

Judgement :

(Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 03.02.2016 made in I.A.No.416 of 2011 in O.S.No.349 of 1994 on the file of the III Additional Subordinate Court, Coimbatore.)

1. This Civil Revision Petition is filed against the fair and decreetal order dated 03.02.2016 made in I.A.No.416 of 2011 in O.S.No.349 of 1994 on the file of the III Additional Subordinate Court, Coimbatore.

2. The mother-in-law of the petitioner herein viz., Chinnammal as a plaintiff has filed a suit in O.S.No.349 of 1994 for partition and separate possession in respect of A to E schedule property. During her lifetime, there was a compromise decree, in which, they have entered into a compromise in respect of Item Nos.A, B and C. After her death, other legal heirs of Chinnammal, who are respondents 1 to 5 herein, succeeded the property as per the Will. Now in pursuance of the

compromise decree, they filed I.A.No.416 of 2011 for passing of final decree to divide the property and allotted 1/3rd share jointly to the respondents 1 to 5. The trial Court has directed the Commissioner to inspect and divide the property and file his report. Challenging the same, the present revision is preferred by the first defendant, who is the daughter-in-law of Chinnammal/plaintiff.

3. Learned counsel for the petitioner would submit the following points for consideration:

(i) The petitioner has no objection for the Commissioner to visit A schedule property and given a proposed division in respect of the parties concerned.

(ii) In respect of B schedule property is concerned, the property has been owned by the father-in-law of the petitioner, who formed a lay out and that B schedule property was let out for public purpose. Now the inmates of the lay out filed a suit in O.S.No.1745 of 1996 on the file of the District Munsif Court, Coimbatore, for injunction restraining the defendants from alienating the suit property and also from putting the same to a different use except for the purpose of maintaining a garden as per the layout plan, which was decreed, against which, the petitioner alone has preferred an appeal in A.S.No.41 of 2001. The said appeal was allowed by dismissing the suit. Aggrieved over the same, the plaintiffs in O.S.No.1745 of 1996 have preferred S.A.No.1222 of 2007 before this Court, which is pending. In the said second appeal, interim injunction has been granted against the petitioner and the respondents herein. Therefore, the submission of the learned counsel for the petitioner is that there is no necessity for appointment of Commissioner to divide B schedule property as per the compromise decree.

(iii) In respect of C schedule property is concerned, there was a sale agreement and the agreement holders have filed O.S.No.1374 of 1995 on the file of the Sub-Court, Coimbatore, for specific performance and that has been dismissed, against which, A.S.No.148 of 2004 was filed by the plaintiffs in O.S.No.1374 of 1995 before the Principal District Court, Coimbatore. The said appeal was allowed, against which, S.A.No.635 of 2008 is preferred by the petitioner alone and the same is pending. Since the second appeal is pending, there is no need to appoint the Commissioner to inspect C schedule property and divide the same into three

shares and allot two shares to the petitioner and one share to the respondents collectively.

Thus, the learned counsel for the petitioner prays for allowing the revision.

4. Learned counsel for the respondents 1 to 5 would submit that if the Commissioner visits the property and files his report with plan, no prejudice would be caused to the rights of the parties, passing of final decree in B and C schedule properties alone can be deferred till the disposal of the second appeals. Hence, he prays for dismissal of the revision.

5. Mr.S.Thangavel, learned counsel for the respondents 6 to 8 would submit that he has adopted the arguments advanced by the learned counsel for the petitioner.

6. Considered the rival submissions made on both sides and perused the typed set of papers.

7. In respect of A schedule property, according to the arguments advanced by the learned counsel for the petitioner, there is no dispute for the appointment of Commissioner to inspect A schedule property, divide the same into three shares, allot two shares to the petitioner and one share to the respondents 1 to 5 collectively.

8. In respect of B schedule property is concerned, it is pertinent to note that 29 cents have been allotted to public purpose and while the father-in-law of the petitioner is getting approval for lay out, it is used as a garden. So the inmates of the lay out filed the suit in O.S.No.1745 of 1996 on the file of the District Munsif Court, Coimbatore. The said suit was decreed, against which, the petitioner alone has preferred an appeal in A.S.No.41 of 2001. The said appeal was allowed by dismissing the suit. Aggrieved over the same, the inmates of the lay out/plaintiffs have preferred S.A.No.1222 of 2007 before this Court, which is pending. Since B schedule property was allotted for public purpose, I am of the view that the inspection of B schedule property by the Commissioner is deferred and he can inspect the property after disposal of S.A.No.1222 of 2007, which is now pending before this Court.

9. In respect of C schedule property is concerned, there was a sale agreement and the agreement holders have filed O.S.No.1374 of 1995 on the file of the Sub-Court, Coimbatore. That suit was dismissed, against which, A.S.No.148 of 2004 was filed before the Principal District Court, Coimbatore and the same was allowed. Aggrieved over the same, S.A.No.635 of 2008 is preferred by the petitioner alone and the same is pending. Admittedly, the said second appeal is filed only by the petitioner and neither Chinnammal/mother-in-law of the petitioner nor the legatees under the Will executed by Chinnammal preferred the second appeal. If the petitioner succeeds in the second appeal, she will be entitled to 2/3 shares and the respondents 1 to 5 are entitled to 1/3rd share. If the petitioner lost her case in the second appeal, no one will get their shares. Therefore, inspection by the Commissioner will no way affect either of the parties. So the Commissioner may visit C schedule property, file his report after dividing the same into three equal shares and allot two shares to the petitioner and one to the respondents 1 to 5 collectively.

10. With the above observations, this Civil Revision Petition is disposed of. The Commissioner is directed to inspect A and C schedule properties, divide the same into three equal shares, allot two shares to the petitioner and one share to the respondents 1 to 5 and file his report with plan to the trial Court. The trial Court, on receipt of the Commissioner's plan and report, is directed to pass final decree in respect of A schedule property alone. The petitioner is directed to take effective steps to dispose of the second appeal within a short spell of time. No costs. Consequently, connected Miscellaneous Petition is closed.

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