

(2017) 06 MAD CK 0072

In the Madras High Court

Case No : 1453 of 2017 and C M P No 1 of 2008

A.Pandian, & Anr.

APPELLANT

Vs

Thenmozhi, & Ors.

RESPONDENT

Date of Decision : 02-06-2017

Acts Referred:

Citation : (2017) 06 MAD CK 0072

Hon'ble Judges : G.Jayachandran

Bench : SINGLE BENCH

Advocate : G.Jayachandran

Final Decision : Dismissed

Judgement

1. The Revision Petitioner is the third defendant in the suit filed for partition. A preliminary decree was passed on 09.11.1993, ascertaining the share of the plaintiff and other sharers. Pursuant to the preliminary decree, a final decree application was filed wherein, the Trial Court after considering the objection made by the revision petitioner has allowed the final decree application ascertaining the respective shares of the parties passed on the preliminary decree. Advocate Commissioner was appointed pursuant to the preliminary decree to divide the properties by metes and bounds and allot 1/20th share to the present revision petitioner.

2. Aggrieved by the said order, the present revision petition is filed on the ground that there is no preliminary decree insofar as the specific share for this revision petitioner and therefore, final decree cannot be passed. When the case is taken up for final hearing, there is no representation for the revision petitioner. The notes paper indicates that on several occasions, this matter was listed for final hearing. But, at the instance of the revision petitioner, it could not be taken up.

3. The learned counsel for the respondent submitted that the purpose of passing a preliminary decree in a partition suit followed by final decree proceedings is well settled by the Judgment of the Hon"ble Supreme Court, rendered in Shub

Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna & others reported in 2009 AIR (SCW) 6541 and in Shankar Balwani Lokhande (Dead) By L.Rs. Vs. Chandrakant Shankar Lokhande and another reported in AIR 1995 SC 1211. The learned counsel for the respondent further submitted that the revision petitioner who is the party to the partition suit has not questioned the finding of the Trial Court and preliminary decree, whereas, in the final decree application, vague plea has been taken by the revision petitioner that unless the share of the revision petitioner is ascertained in the preliminary decree, no final decree proceedings can be initiated.

4. It is not the case of the revision petitioner that she is entitled for more and above 1/20th share in the suit properties, nor the case of the revision petitioner that the preliminary decree as such is contrary to the facts. In the said circumstances, the plea of the revision petitioner that non-mentioning of the share of the revision petitioner in the preliminary decree, will render the final decree proceedings obsolete, is un-sustainable and contrary to the decision rendered by Supreme Court. It is relevant to extract the following observation made by the Supreme Court in Shub Karan Bubna case cited supra which has settled the issue without any ambiguity.

"In partition suits, there can be a preliminary decree followed by a final decree, or there can be a decree which is combination of preliminary decree and final decree or there can be merely a single decree with certain further steps to be taken by the Court. In fact several applications for final decree are permissible in a partition suit. A decree in a partition suit ensures to the benefit of all the co-owners and therefore, it is sometimes said that there is really no judgment-debtor in a partition decree. A preliminary decree for partition only identifies the properties to be subjected to partition, defines and declares the shares/rights of the parties. That part of the prayer relating to actual division by metes and bounds and allotment is left for being completed under the final decree proceedings. Thus, the application for final decree as and when made is considered to be an application in a pending suit for granting the relief of division by metes and bounds. Therefore, the concept of final decree in a partition suit is different from the concept of final decree in a mortgage suit. Consequently, an application for a final decree in a mortgage suit is different from an application for final decree in partition suits".

5. In the light of the above discussion, this Court finds no merit in the Civil Revision Petition. Hence, petition dismissed. Since, the suit is of the year 1991 and a decree in the suit was passed in the year 2007, nearly 10 years ago. Earlier disposal of the final decree proceedings by the Trial Court, will be well appreciated.

6. Accordingly, the Civil Revision Petition is dismissed with the above direction. No Costs.