

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.12.2015

CORAM

THE HONOURABLE Ms.JUSTICE R.MALA

CRP.No.1815 of 2014
and M.P.No.1 of 2014

D.Lakshmi

..

Petitioner

– Vs –

1.S.Govindammal

2.Thangamani

3.Muniyammal

4.Lalitha

5.Mahendaran @ Mari

6.V.Geetha

7.V.Vignesh

8.Sundari

9.Munusamy

10.K.Sasi

..

Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 02.04.2014 made in I.A.No.15924 of 2013 in O.S.No.8419 of 2011 on the file of the XI Asst. Judge City Civil Court, Chennai.

For Petitioner : Mr.C.B.Muralikrishnan

ORDER

The Civil Revision Petition is filed against the order dated 02.04.2014 made in I.A.No.15924 of 2013 in O.S.No.8419 of 2011 on the file of the XI Asst. Judge City Civil Court, Chennai.

2.Heard the learned Counsel appearing for the petitioner.

3.Learned counsel appearing for the petitioner/plaintiff submitted that the petitioner, who is the daughter of one Late K.Chockalingam, has filed a suit in O.S.No.8419 of 2011 for partition and separate possession of 1/3rd share in the suit property. During the pendency of the suit, the petitioner has filed an application in I.A.No.15924 of 2013 stating that, in the plaint it is stated that the constructed area is 1000 Sq.ft out of 2115 Sq.ft and thereafter, she came to know that the constructed area is 1500 sq.ft and hence to verify the same, appointment of Advocate Commissioner is necessary. The Trial Court, after hearing both sides dismissed the application. He further submitted that the trial Court has wrongly dismissed the application stating that the application for appointment of Advocate Commissioner has been filed for procuring the evidence to prove what is the real area totally available for partition. Hence, he prayed for setting aside the order passed by the Trial Court.

4.Even though notice was served to the respondents and their names appeared in the cause list, there is no representation for the respondents.

5.Considered the arguments advanced by the learned counsel for the petitioner and perused the typed set of papers.

6.The petitioner, who is the daughter of one Late.K.Chockalingam, has filed the suit against her two brothers for partition stating that the suit property belongs to the Trust viz., Sri.Agastheeswarar and Prasanna Venkatesa Perumal Devasthanam, Nungambakkam, Madras Religious Trust. The suit property was leased out by the trust in favour of her father and on his own funds, her father put up the superstructure on the said leasehold land with the permission of the trust over an extent of about 1000 sq.ft, with Asbestos cement sheet roof and over an extent of about 1000 sq.ft with thatched roof. But the respondents/defendants resisted the same stating that in the trust property, no one is entitled to claim partition and the issue has been framed.

7.On perusal of the typed set of papers, it is seen that the petitioner/plaintiff, who is the daughter of one late Chockalingam has filed the suit for partition and separate possession of 1/3rd share in the trust property . In her evidence, she has stated that her father took the property on lease and constructed asbestos cement sheet roof and thatched roof. So, I am of the view that the trial Court has rightly considered the fact that no commissioner needs to be appointed to prove that the father of the plaintiff

was a lease hold right over the property. Under such circumstances, whether the property is liable to be divided can be decided only at the time of trial and if the preliminary decree for partition has been granted, an Advocate Commissioner can be appointed to divide the property and at that time only the property can be measured. It is the case of the petitioner that her father has taken a lease and she is very well file the lease deed to prove what extent of the property her father has taken. Hence, I do not find any merits to interfere with the order passed by the trial Court and the Civil Revision Petition deserves to be dismissed.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.12.2015

Index: Yes/No
Internet: Yes/No
sms

To

The XI Asst. Judge City Civil Court, Chennai.

R.MALA. J.,

sms

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