

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.1727 of 2015
and M.P.No.1 of 2015

1.G.Srinivasan (Deceased)
2.G.Sakrapani
3.G.Sankar
4.Gangadaran (Deceased)
5.Miss Suguna Bai
6.Muralidharan (Deceased)
7.Puzhali @ Poonguzhli
8.Gowri
9.Lalitha

.. Petitioners

Vs

1.Kotteeswari (Deceased)
2.B.Karuna Bai
3.A.Mallika
4.B.Indira
5.Sankari
6.T.Sundaramurthy
7.R.Vijayalakshmi

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 18.04.2015 made in I.A.No.6277 of 2015 in I.A.No.13709 of 2004 in O.S.No.2687 of 1992 on the file of the II Assistant City Civil Judge, Chennai.

For Petitioner : Mr.M.Boopathy
For Respondents : Mr.Parthasarathy (For R2 to R7)
R1 (Died)

ORDER

The Civil Revision Petition is filed against the order dated 18.04.2015 made in I.A.No.6277 of 2015 in I.A.No.13709 of 2004 in O.S.No.2687 of 1992 on the file of the II Assistant City Civil Judge, Chennai.

2.The respondent as plaintiffs filed a suit for partition and separate possession of 1/5th share in the property. Preliminary decree has been passed on 21.10.1998. Thereafter the plaintiffs filed I.A.No.13709 of 2004 to pass final decree, wherein Advocate Commissioner was appointed. He inspected the property and filed a report stating that the property is not feasible for division. The Advocate Commissioner fixed the upset price and also fixed the sale by auction on 22.04.2015. At this juncture, the revision petitioners/defendants filed I.A.No.6277 of 2015 to stay the proceedings by the Advocate Commissioner and to bring the suit property for sale by auction on 22.04.2015 in the interest of justice. The Trial Court has ordered notice on 18.04.2015 returnable by 23.04.2015. Against which, the present Civil Revision Petition has been filed by the defendants.

3.The main grievance of the learned counsel for the petitioners is that the auction has been fixed on 22.04.2015 but the notice has been ordered

returnable on 23.04.2015. He further submitted that as against the passing of Preliminary Decree they filed A.S.S.R.No.42506 of 2015 which was posted on 17.11.2015 and again adjourned to 09.12.2015 for fresh notice. Hence, he prayed for an order.

4.Resisting the same, the learned counsel for the respondents would submit that they are the legal heirs and since the defendants are in possession of the property, with a view to drag on the proceedings, they have filed revision by challenging the order issuance of notice. Hence, he prayed for dismissal of the revision petition.

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

6.The suit in O.S.No.2687 of 1992 has been filed for partition and separate possession of $1/5^{\text{th}}$ share in the property. Preliminary decree has been passed on 21.10.1998, but no appeal has been preferred only A.S.S.R.No.42508 of 2015 has been filed which was adjourned to 09.12.2015. But admittedly in I.A.No.13709 of 2004 Advocate Commissioner was appointed, he inspected the property and since the property was not feasible for division, the Advocate Commissioner followed the procedure and fixed the upset price

and also fixed the sale by auction on 22.04.2015. At this juncture, the revision petitioners/defendants filed I.A.No.6277 of 2015 wherein notice was ordered on 18.04.2015 returnable on 23.04.2015 which shows the malafide intention of the petitioners who are in possession of the property and only with a view to drag on the proceedings they filed the application to stay the auction. Furthermore, without filing an appeal even though the preliminary decree has been passed as early as on 21.10.1998, the defendants filed A.S.S.R.No.42508 of 2015 after a period of 17 years which shows that with the malafide intention to defraud the plaintiffs, this application has been filed. Further, only notice has been ordered and no final order has been passed in the application filed by the defendants/revision petitioners. In these circumstances, I am of the view that this revision petition deserves to be dismissed as devoid of merits and abuse of process of Court.

7. In the result, the present Civil Revision Petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand Only) to be paid to the Chief Justice Relief Fund. Consequently, connected miscellaneous petition is closed. No costs.

24.11.2015

Index: Yes/No
Internet: Yes/No
cse

R.MALA. J.,

cse

To

The II Assistant City Civil Judge, Chennai.

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