

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2015

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THE HONOURABLE MR.**JUSTICE D.HARIPARANTHAMAN**

**CRP (PD) No.3988 of 2015
and M.P.No.1 of 2015**

N.K.Kubendaran Naidu

... Petitioner

VS.

N.K.Jayalakshmi

... Respondent

Civil Revision Petition has been filed against the order dated 07.08.2015 made in IA.No.9086 of 2015 in IA.No.16575 of 2013 in OS.No.4012 of 1999 on the file of the learned III Additional Judge (in-charge) of II Additional Court, City Civil Court, Chennai.

For petitioner : Mr.R.Thiagarajan

For Respondent : Mr.V.Manisekaran

ORDER

The revision petitioner is the first defendant in OS.No.4012/1999 on the file of the learned II Additional Judge, City Civil Court, Chennai and the respondent herein is the plaintiff therein. The respondent / plaintiff filed the aforesaid suit for partition.

2.The details of the suit are not necessary for disposal of this Civil Revision Petition.

3.While so, a preliminary decree was passed on 5.2.2003 in OS.No.4012/1999 and the same attained finality. Thereafter, an Advocate Commissioner was appointed in the final decree proceedings.

The revision petitioner was admittedly set exparte in the final decree proceedings. In these circumstances, the Advocate Commissioner made his inspection and seems to have filed his report.

4.In the mean time, the revision petitioner filed an application to set aside the exparte decree in the final decree proceedings and the same was allowed. The same is not disputed by the learned counsel for the respondent / plaintiff.

5.Thereafter, the revision petitioner filed IA.No.9086/2015 in IA.No.16575/2013 in OS.No.4012/1999 to re-issue the warrant to the Advocate Commissioner to reinspect the suit schedule property afresh and file his report in accordance with law. However, the said application was dismissed by the trial court by order dated 07.08.2015. Hence, he filed the present Civil Revision Petition.

6.Considering the aforesaid facts and circumstances of the case, I am of the view that the order dated 07.08.2015 made in IA.No.9086/2015 in IA.No.16575/2013 in OS.No.4012/1999 refusing to reissue the warrant to the Advocate Commissioner to reinspect the suit schedule property afresh and file his report in accordance with law, is not correct particularly when the order setting the revision petitioner as exparte, was set aside in the final decree proceedings.

7.Hence, I am inclined to interfere with the order questioned

before this Court. Accordingly, the impugned order is set aside. A further direction is issued to reissue the warrant to the Advocate Commissioner to reinspect the suit schedule property afresh and file his report in accordance with law, within a period of eight weeks from today. It is needless to say that the Advocate Commissioner shall issue notice to all the parties, before making inspection.

8.The Civil Revision Petition is disposed of in the above terms.
No Costs. Consequently, connected Miscellaneous Petition is closed.

28.10.2015

Index:Yes
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To
1.The III Additional Judge (in-charge) of II Additional Court,
City Civil Court, Chennai.

**NOTE TO OFFICE:
ISSUE ORDER COPY ON 30.10.2015**

D.HARIPARANTHAMAN, J.

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C.R.P. (PD) No.3988 of 2015

28.10.2015