

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.03.2016

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THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.5017 of 2014
and M.P.No.1 of 2014

Rajendran

... Petitioner

Vs

1.Munusamy
2.Yasodha
3.Neela

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 02.12.2014 made in I.A.No.12020 of 2013 in O.S.No.9030 of 2006 on the file of the XII Assistant Judge, City Civil Court, Chennai praying the same be set aside.

For Petitioner : Mr.P.S.Vasanthakumar
For R1 and R3 : Mr.R.G.Annamalai
For R2 : Mr.M.Prabakar

ORDER

The 1st defendant in the Original Suit No.9030 of 2006 pending on the file of the 12th Assistant Judge, City Civil Court, Chennai is the petitioner herein. The 1st respondent is the plaintiff and the respondents 2 and 3 are the defendants 2 and 3. A preliminary decree was passed on 24.11.2008 and for passing final decree in accordance with the preliminary decree, I.A.No.11772 of 2011 was filed. In the said application, one Ms.B.Yamuna Devi, Advocate was appointed as Advocate

Commissioner to visit the suit property, measure and file a report with plan/plans suggesting the way in which, the property can be divided in accordance with the preliminary decree. The Advocate Commissioner, taking the assistance of a licensed Surveyor, visited the property, measured it and submitted a report and three plans. Besides filing objections to the said report of the Advocate Commissioner, the revision petitioner/1st defendant filed an application I.A.No.12020 of 2013 under Order XXVI Rule 13 and 14 of C.P.C. with the following prayer :

“to set aside the Report and Plan 1 and 2 of the Advocate Commissioner submitted on 05.07.2013 and appoint a fresh Advocate Commissioner for inspection of the suit schedule property, note down the physical features of the same and to divide into two equal shares and to submit the fair report in accordance's to the preliminary decree dated 24.11.2008 of the suit schedule property Old No.40, New No.26, Manthottam 1st Street, Maduvankarai, Chennai-32.”

The said petition, after enquiry was dismissed by the trial Court by an order dated 02.12.2014. The said order is challenged in the present Civil Revision Petition.

2. Though the learned counsel for the petitioner initially contended that the Advocate Commissioner already appointed did whatever the 1st respondent/plaintiff wanted her to do, the learned counsel for the 1st respondent/plaintiff submits that no case of bias has been made out by the petitioner; that since there is only a discrepancy regarding the width of the passage on the Eastern side of the property in plan-2 which differs from plan-1, the ambiguity

should be cleared by reissuing the warrant to the very same Commissioner. The learned counsel for the 1st respondent submits that the 1st respondent/plaintiff does not have any objection for reissuing the warrant to the very same Commissioner to revisit the property and submit a fresh report and plans suggesting the mode of division in accordance with the preliminary decree, with reference to area as well as the value, as the earlier report does not contain the particulars of the value of the area to be allotted. Learned counsel for the petitioner also submits that the petitioner will be satisfied, if such an order is passed.

3. Accordingly, the Civil Revision Petition is allowed and the order of the trial Court dated 02.12.2014 is set aside. In I.A.No.12020 of 2013, the following order is passed :

“The prayer for scrapping of report and the plans shall stand rejected.

However, warrant shall be reissued to the very same Commissioner to revisit the property along with a licensed valuer and submit an additional report and plans suggesting the mode or modes of division giving the value of the suggested shares also.”

No costs. Consequently, the connected Miscellaneous Petition is closed.

31.03.2016

Index : Yes/No
 Internet : Yes/No
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To

The XII Assistant Judge,
City Civil Court, Chennai.

P.R.SHIVAKUMAR, J.

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