

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

CRP (NPD) No.1212 of 2016

and

C.M.P.No.6611 of 2016

P.Venkateswara Rao

... Petitioner/Plaintiff

Vs.

N.Lakshmi Bai

... Respondent/Defendant

Civil Revision Petition filed under Section 115 of Civil Procedure Code 1908, set aside the order of dismissal dated 20.01.2016 made in I.A.No.4803 of 2015 in I.A.No.15196 of 2013 in O.S.No.3481 of 2011, on the file of the learned XVI Assistant Judge, City Civil Court at Chennai and to allow the same.

For Petitioner : Mr.C.Shankar

ORDER

The plaintiff filed a suit for partition against his sister and the Court passed a preliminary decree on 21.09.2011, directing division of property into three shares and to allot two shares in favour of the plaintiff.

1.1. The Advocate Commissioner filed a report in O.S.No.3481

of 2011 before the City Civil Court, Chennai, stating that the suit property is not divisible and therefore, he is unable to divide the property and allot one share to the plaintiff. This report is filed along with rough sketch.

1.2. Thereafter, the plaintiff filed an application in I.A.No.4803 of 2015, under Section 3(1) of the Partition Act, seeking leave to buy $1/3^{\text{rd}}$ share of the defendant as a co-owner for the value of Rs.1,00,000/- . This petition was dismissed on 20.01.2016. This order is under challenge in this Civil Revision Petition.

2. It is the contention of the learned counsel for the revision petitioner that a) the order is a non-speaking order; b) the trial Judge failed to exercise his power to fix the value of the share; c) the trial Court failed to take note of the fact that the defendant is set ex parte.

3. To find out whether these contentions are justified, it is necessary to look into the order passed by the trial Court.

3.1. A perusal of the order would reveal that the plaintiff should not be punished for the mistake committed by the defendant in remaining ex parte. The lower Court has given a finding that without hearing the respondent's option and without knowing the correct value of

the respondent's share, the petition for purchase cannot be entertained. If the respondent is ex parte, then the inference is that she has no objection to sell her share of the property.

3.2. So far as the value is concerned, if the Court entertained a suspicion that because of the absence of the respondent, the value stated by the plaintiff cannot be accepted, then the Court should have utilized the service of the Advocate Commissioner or any other officials to fix the value of the property. Shirking the responsibility, the Court cannot say that just because, the respondent is ex parte, the Court cannot fix the value. Therefore, the order passed by the Court below is set aside and the matter is remitted back to the trial Court with a direction to consider the application filed under Section 3(i) of the Partition Act and to pass orders in accordance with law.

3.3. This Civil Revision Petition is ordered in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2016

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S.VIMALA.J

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To

1. Learned XVI Assistant Judge,
City Civil Court at Chennai

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