

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Civil Revision Petition (PD) No.1561 of 2016 &
CMP.No.8437 of 2016

S.C.Thangamuthu

.. Petitioner

Versus

Maheswari

.. Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, against the Fair and Final order, dated 04.01.2016 in I.A.No.810 of 2015 in O.S.No.183 of 2011 on the file of Sub Court, Perundurai and to allow the Civil Revision Petition.

For Petitioner : Mr.Kaithamalai Kumaran.

ORDER

The petitioner filed an application before the trial court, in a suit for partition, to appoint an Advocate Commissioner to report about the physical features and more particularly, the residential house constructed by him, after purchasing the share from the respondent, while she was a minor.

2. The application was dismissed by the learned Trial Judge, on the ground that there is no need for appointment of commissioner, during

the stage of passing the preliminary decree. The said order is under challenge in this Civil Revision Petition.

3. The learned counsel for the petitioner contended that it was only when the respondent denied the construction of a residential house by the petitioner, he has taken up the application for appointment of Advocate Commissioner, before the trial court.

4. The petitioner is a party to the suit in O.S.No.183 of 2011, filed by the respondent, for partition. The petitioner claims equity on the ground that he has already constructed a house and as such the said property is not available for partition.

5. The petitioner waited till evidence is taken for filing the application for appointment of Advocate Commissioner. There is no question of deciding the equity and reservation, when the court is yet to pass a preliminary decree. The scope of the present suit is very limited. The court has to consider the factual matrix and decide, as to whether the suit property is liable for partition and what is the extent of share to which the plaintiff and other parties are entitled to. The learned Trial Judge has given sufficient reasons, while dismissing the petition for appointment of Advocate Commissioner. I do not find any error or illegality in the said

order, warranting interference by this court, by entertaining this Civil Revision Petition.

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

07.09.2016

Index :Yes/No.
Internet:Yes/No.
pvs

To

1. Sub Court, Perundurai

K.K.SASIDHARAN, J.,

pvs

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