

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.288 of 2016

and

C.M.P.No.1374 of 2016

B.Chitti Babu @ Devarajulu

... Petitioner

vs.

1.C.Abilash (Minor)

2.C.Karthik (Minor)

Rep. by their mother

Mrs.C.Punitha

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the Subordinate Judge, Ponneri dated 30.11.2015 made in I.A.No.408 of 2010 in O.S.No.1 of 2002.

For Petitioner : Mr.G.Satishkumar for
M/s.GSK Law Firm

ORDER

The sole defendant in O.S.No.1/2002 filed by the respondents herein for partition and separate possession is the petitioner in the present revision. The respondents herein, who are the plaintiffs, are none other than minor children of the petitioner in the revision. In the suit, they were represented by their mother and next friend Smt.Punitha.

2. After contest, the suit came to be decreed for partition and a preliminary decree was passed on 13.07.2005. The said preliminary decree was challenged by the petitioner herein in A.S.No.42/2006 before the District Court, Tiruvallur. The said appeal was dismissed on 30.08.2007. As against the said decree of the lower appellate court, a Second Appeal was sought to be filed in S.A.No.SR18538/2013 along with an application in M.P.No.1/2013 to condone the delay of more than four years. The said petition came to be dismissed by a learned Judge of this court by order dated 07.01.2014.

3. Meanwhile, final decree application was filed before the trial court in the year 2010 itself. From 2010 till 2015, the petitioner herein was able to block further proceedings in the final decree application. At last, taking note of the repeated representations that the petitioner had presented an application for review of the order of the High Court dated 07.01.2014 and that no order could be produced by him and also that there was no order of stay, the learned trial Judge chose to appoint an Advocate-Commissioner to visit the suit properties, measure them and submit a report suggesting the manner in which the properties can be divided in accordance with the preliminary decree.

4. The petitioner, having suffered a preliminary decree, which was confirmed by the lower appellate court in the first appeal and suffered an order of dismissal of the petition filed before this court for condoning the delay of more than four years in preferring the second appeal, without even taking the matter to Supreme Court by way of an appeal on Special Leave, has chosen to present a Review Application in 2014, which has not yet been numbered. The petitioner chose to project the unnumbered Review Application as a pending Review Application and prevented the progress of the case in the final decree application before the trial court. Such an attempt can be even termed as an attempt at abuse of process of court to deny the fruits of the preliminary decree obtained by the respondents, who are the petitioner's own children, by adopting such dilatory tactics.

5. The court below has not committed any mistake in passing an order appointing a Commissioner to submit a report suggesting the manner in which the properties can be divided in accordance with the preliminary decree. In fact against such an order no revision can lie and the invocation of the power of superintendence under Article 227 is also not only on a misconception, but also with a malafide intention. Hence this court does have no hesitation in coming to the conclusion that the revision deserves rejection at the threshold.

Accordingly the revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

09.02.2016

Index : Yes/No
Internet : Yes/No
asr

To

1.The Subordinate Judge, Ponneri

P.R.SHIVAKUMAR, J.

asr/-

C.R.P (PD) No.288 of 2016

and

C.M.P.No.1374 of 2016

09.02.2016