



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (MD) No.1741 of 2016 (PD
and
C.M.P. (MD) .No.8432 of 2016

Kaliyammal Palaniyappan
Educational Trust,
represented by its Trustee-cum-Treasurer
S.Muthusamy

.. Petitioner

Vs.

Minor K.Jegadeesh,
rep. by his guardian/mother
Shanthi

.. Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in a Memo filed in I.A.No.485 of 2010 in O.S.No.308 of 2008 dated 07.06.2016, on the file of the learned Principal Subordinate Judge, Karur.

For Petitioner : Mr.E.K.Kumaresan

ORDER

This revision arises out of the order passed by the learned Principal Sub Judge, Karur in a memo filed in I.A.No.485 of 2010 in O.S.No.308 of 2008.

2. The respondent, as plaintiff instituted a suit against the petitioner and 7 others claiming partition and separate possession. During the pendency of the suit, the petitioner filed an application in I.A.No.485 of 2010 for appointment of an Advocate Commissioner to note down the physical features of the suit property to ascertain the value of the building constructed in Item No.1 of the suit properties.

3. However, learned Principal Sub Judge, Karur allowed the application in part and appointed an Advocate Commissioner to note down the physical features and measure the suit property. The order was challenged by the petitioner before this Court in C.R.P. (MD).No.1251 of 2011.



4. This Court having found that in a partition suit, an Advocate Commissioner need not be appointed to ascertain the value before passing a preliminary decree, dismissed the revision. Thereupon, the petitioner filed a memo stating that the commissioner already appointed in I.A.No.485 of 2010 has been elevated to the Bench and hence a new Advocate Commissioner has to be appointed to comply the order.

5. The respondent filed objections to the memo stating that as per the order passed in C.R.P.(MD).No.1251 of 2011, by this Court, another Advocate Commissioner cannot be appointed. The Court accepting the objections, dismissed the memo. Challenging the order, the present revision is filed.

6. Heard Mr.E.K.Kumaresan, learned counsel appearing for the petitioner and perused the records.

7. It is not in dispute that the respondent has filed the suit for partition and separate possession claiming his 1/4th share in the suit property. In C.R.P.(MD).No.1251 of 2011, this Court has rightly observed that ascertaining the value of the property has to be done only in the final decree proceedings. It is an admitted fact that the Trial Court is yet to pass a final decree in this case. In such view of the matter I do not find any merits in this revision.

8. In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To
The Principal Subordinate Court,
Karur.

+1 cc to MR.E.K.KUMARESAN, Advocate SR.No.50317

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SMA/SS-2/21/09/2016 :2P/3C