

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1261 of 2017
and CMP.No.5897 of 2017

R.Jaya

.. Petitioner

Vs

- 1.K.Munusamy
- 2.K.Sekar
- 3.K.RAvi
- 4.Jagadambal
- 5.Mallika
- 6.Rani
- 7.Latha
- 8.Sumathi

- 9.The Estate Officer,
The Tamil Nadu Slum Clearance Board,
Sathiamoorthy Nagar,
(Near Ashok Nagar)
Vyasarpadi, Chennai - 39.

- 10.The Assistant Secretary (Plots),
The Tamil Nadu Slum Clearance Board,
S.Kamarajar Salai,
Chennai - 600 005.

- 11.The Sub Registrar,
Purasaiwalkam Sub Registrar Office,
Purasaiwalkam, Chennai - 600 007.

.. Respondents

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, against the order and decretal order in I.A.No.1309 of 2015 in O.S.6574 of 2011 dated 22.02.2017 passed by the VIII Assistant Judge, City Civil Court, Chennai, on 22.2.2017 appointing an Advocate Commissioner.

For Petitioner : Mr.V.Manisekaran

ORDER

The revision petitioner has filed this Civil Revision Petition, challenging the order and decretal order dated 22.02.2017 in I.A.No.1309 of 2015 in O.S.6574 of 2011 dated 22.02.2017 passed by the VIII Assistant Judge, City Civil Court, Chennai.

2. The revision petitioner is the ninth defendant in O.S.No.6574 of 2011 on the file of the VIII Assistant City Civil Court, Chennai and she is said to be in possession and enjoyment of the suit schedule property.

2.1 The respondents 1 to 4 herein are the plaintiffs, and the respondents 5 to 12 herein are the defendants 1 to 8 in the suit.

3. The respondents 1 to 4/plaintiffs filed a suit for (a) declaration to declare the sale deed dated 09.3.2011 registered at Sub-Registrar Office, Purasaiwalkam as document No.1012/2011 executed by the sixth defendant in favour of the first defendant in respect of the suit property as null and void, and (b) to pass a preliminary decree for partition, thereby divide the suit property into six equal shares and to allot 1/6th of such shares to each one of the plaintiff. The preliminary decree for partition was passed in O.S.No.6574 of 2011, after contest. According to the plaintiffs, even after passing of preliminary decree for partition, the defendants have not come forward to divide the suit property and therefore, the plaintiffs have filed I.A.No.1309 of 2011, for passing of final decree and for appointment of Advocate Commissioner.

Except the ninth defendant/9th respondent, the other respondents in I.A.No.1309 of 2011 remained absent and were set ex-parte. The 9th defendant has contested the said application in I.A.No.1309 of 2011.

4. It is contended by the 9th defendant, the revision petitioner herein that since the plaintiffs have not challenged the sale deed dated 25.08.2011 executed by the 1st defendant/5th respondent herein in her favour, the suit itself is not maintainable and the preliminary decree is an inexecutable decree. Hence, as against the judgment and preliminary decree passed in O.S.No.6574 of 2011, the 9th defendant has filed an appeal in A.S.No.357 of 2013 before the learned VII Additional City Civil Court, Chennai, praying to dismiss the preliminary decree. The said appeal is pending. During the pendency of the appeal, the learned Judge has allowed the application in I.A.No.1309 of 2015, considering the fact that the Appellate Court has not passed an order of stay in the appeal and even if an appeal was preferred for passing of final decree, there is no impediment to appoint an Advocate Commissioner to inspect and divide the suit property as per the preliminary decree. Challenging the said order of appointment of Advocate Commissioner, the 9th defendant has filed the present Civil Revision Petition.

5. The learned counsel for the revision petitioner/9th defendant contended that in view of the pendency of appeal in A.S.No.357 of 2013, the application for appointment of Advocate Commissioner is not maintainable. Moreover, the plaintiffs have also not challenged the sale

deed dated 25.08.2011 executed in favour of the revision petitioner/9th defendant by the 1st defendant/5th respondent herein.

6. The contention raised by the revision petitioner is that the plaintiffs have not challenged the sale deed dated 25.08.2011, it can only be decided by the Appellate Court. The learned Judge also held that there was no proceedings by the Appellate Court to stay the preliminary order in the appeal filed by the revision petitioner. In the said circumstances, this Court is of the view that the learned trial Judge is correct in allowing the application to appoint an Advocate Commissioner to decide the final decree proceedings.

7. Therefore, this Court does not find any irregularity or illegality in the order passed by the trial Judge warranting interference by exercising the revisional jurisdiction under Section 227 of the Constitution of India.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2017

ds

To:

The VIII Assistant Court,
City Civil Court, Chennai.

V.M.VELUMANI,J

ds

CRP (PD) No.1261 of 2017

05.04.2017
<http://www.judis.nic.in>