

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD).No.3712 of 2017

and

C.M.P.No.17237 of 2017

- 1.G.Chandran
2. G.Saroja
3. G.Santhi
4. G.Sulochana
5. G.Vasanthi
6. G.Lakshmi

... Petitioners

- Vs -

1. Venkatraman
2. Thenmozhi
3. Sukumaran
4. Parameswari
5. Menaka
6. Karthick
7. S.Saraswathi
8. S.Yogalakshmi
9. S.Shyam Sundar
10. P.K.Gopala Krishnan
11. Manju Agarwal
12. Usha Agarwal
13. Ajay Kumar Agarwal
14. Amit Kumar Agarwal

... Respondents

Prayer : Writ Petition filed under 115 of C.P.C., against the fair and decretal order made in I.A.No.203 of 2007 in O.S.No.28 of 1986 duly

passed by the Additional Sub-Judge, Chengalpet, dated 07.10.2016 directing the appointment of an advocate commissioner to make an inspection of the suit property and to ascertain the good and bad soil and to divide the suit property as well in four equal shares and for allotment of two such shares to the respondents 1 to 9 and consequently file a report and a sketch.

For Petitioners : Mr.D.Ashok Kumar
For Respondents : Mr.P.Munusami

ORDER

According to the petitioner, the deceased plaintiff has filed the suit in O.S.No.28 of 1986 for partition and for appointment of Advocate Commissioner to divide the suit properties and allotment of share to the plaintiff. The legal heirs of the sole plaintiff Pattammal @ Meenakshi who died on 09.01.1998, have filed the application in I.A.No.203 of 2007 in O.S.No.28 of 1986 under Order XXVI Rule 13 and Section 151 C.P.C., to pass a final decree in pursuance of the final preliminary decree dated 13.11.1992, by appointing an Advocate Commissioner to suggest mode of division relating to the suit properties and to make inspection of the suit property to ascertain the good and bad soil and to divide the suit property in to four equal shares and for allotment of two such shares to the respondents 1 to 9 and file a report and a sketch. The respondents 3 to 7

herein have filed counter before the trial court by contending that the said application is not maintainable, since the 8th defendant Gopalakrishnan has been wrongly stated as 7th defendant in the application and also another defendant namely Sulochana has been wrongly stated as 5th defendant in the suit have not been impleaded as defendants in the suit. The impleaded parties also filed counter. Thereafter, the instant application was allowed. Challenging the aforesaid order, the petitioner preferred this revision petition before this Court.

2. The learned counsel for the petitioner submitted that the petitioners/defendants have objected for appointment of Advocate Commissioner. According to the learned counsel for the petitioner, the Advocate Commissioner cannot inspect the petitioners' property. Therefore, the order passed by the court below is liable to be set aside.

3. The learned counsel for the respondents would submit that the trial court has considered the objection of the petitioner by stating that the allegation of the petitioner would be considered at the time of passing of the final decree. Therefore, the court below has rightly passed the order and all the objections of the petitioners herein can be considered at the time of filing the report by the Advocate Commissioner.

D.KRISHNAKUMAR, J.,
ssn

4. In view of the above observation, no prima facie is made out in the present revision petition. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2017

Index:Yes/No
Speaking order/Non-speaking order
ssn

To

The Additional Sub-Judge,
Chengalpet.



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