

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.69 of 2017
and
C.M.P.No.376 of 2017

1. K.Gopalakrishnan

2. Nirmala

3. K.Thilaga

4. Minor Praveen Sri

5. Minor Manojvel

(Minors are represented by guardian
and next friend their mother K.Thilaga)

.. Petitioner

Vs.

K.P.Thangamani

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 29.09.2016 made in I.A.No.680 of 2016 in O.S.No.75 of 2010 on the file of the Sub-Court, Bhavani.

For petitioner : Mr.S.Kaithamalai Kumaran

For respondent : Mr.N.Manokaran

ORDER

In a suit for partition, the plaintiffs have filed an application under Order 26 Rule 9 CPC for appointing an Advocate Commissioner to note down the physical features of the fourth item of the suit property. It is their claim that they are in possession and enjoyment of the suit property. The second defendant has purchased the fourth item of the suit property through Court and he has stated that there is a 10x10 feet shed inside the fourth item of the suit property and that he is using the same. According to the plaintiffs, there is no such shed as stated by the second defendant. It is also stated that there is bore-well, compressor, etc., in the suit property. Therefore, the plaintiffs have filed the application to appoint an Advocate Commissioner to note down the physical features with respect to the fourth item purchased by the second defendant. After contest, the said application was dismissed. Whether the fourth item of the suit property is sold or not and whether the second defendant is in possession of the same or not, have got nothing to do with the title. In a partition suit, preliminary decree will be passed only declaring the share of the respective parties. Thereafter, only in the final decree, the actual division by metes and bounds will happen, subject to equity that may be claimed by the parties. The said final decree proceedings will also be based on the report of an Advocate Commissioner. The present application for appointment of the Advocate Commissioner is unnecessary and has been rightly dismissed by

the trial Court and there is no reason to interfere with the same. It is open for the revision petitioners to work out their remedies in the final decree proceedings with respect to all the contentions that they have raised in the application. The Civil Revision Petition is disposed of accordingly. No costs. C.M.P. is closed.

19.01.2017

CS

Copy to

The Sub-Judge, Bhavani.

PUSHPA SATHYANARAYANA, J

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