

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(NPD).No.2737 of 2015 and
M.P.No.1 of 2015

G.Ramesh

...Petitioner

Vs

1.Ravichandiran

2.Saravanan

3.Tamil Selvi

...Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order in I.A.No.182 of 2009 in O.S.No.233 of 2003 dated 26.06.2014 on the file of the Subordinate Court, Tiruvallur.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.R.Karunakaran for R1 & R2
Ms.R.Saritha for R3

ORDER

This Civil Revision Petition is directed against the order dated 26 June, 2014 in I.A.No.182 of 2009, whereby and where under, the learned Subordinate Judge, Tiruvallur, appointed Advocate

Commissioner to divide the suit properties, in accordance with the preliminary decree, dated 13 November 2007 in O.S.No.233 of 2003.

2. This Civil Revision Petition is preferred by the petitioner in I.A.No.182 of 2009, who was the plaintiff in O.S.No.233 of 2003 on the ground that subsequent to the preliminary decree dated 13 November, 2007, there was a family arrangement dated 22 November, 2009, resulting in passing a final decree in I.A.No.157 of 2011. According to the petitioner, in view of the order in I.A.No.157 of 2011, the Trial Court was not correct in taking up the application in I.A.No.182 of 2009 and appointing Advocate Commissioner to divide the properties by metes and bounds.

3. The learned counsel for the petitioner contended that the first respondent was very much a party to the family arrangement dated 22 November, 2009 and as such, he was not correct in contending subsequently that a final decree has to be passed in I.A.No.182 of 2009. The learned counsel by placing reliance on the affidavit filed by the first respondent in I.A.No.74 of 2013 contended that the family arrangement was admitted by him and as such, the contrary stand taken subsequently has no basis.

4. The learned counsel for the first respondent on the other hand submitted that Item No.7 of the suit property was a self acquired property of the first respondent and as such, it was not liable for partition. According to the learned counsel, the first respondent was not given a copy of the family arrangement and as such, he was not aware of the details of the so called arrangement.

5. The petitioner filed a suit in O.S.No.233 of 2003 before the Sub-Court, Tiruvallur, for partition and separate possession of his share. The property purchased by the first respondent was shown as Item.No.7 in the plaint schedule. Before the Trial Court, the first respondent appears to have taken a contention that Item No.7 is not liable for partition. Notwithstanding the said contention, the Trial Court passed a preliminary decree on 13.11.2007 partitioning the properties in accordance with the shares of the parties. The Preliminary Decree has been become final.

6. The petitioner filed an application in I.A.No.157 of 2011 for passing a final decree in terms of the preliminary decree. The materials available on record indicate that subsequent to the initiation of the final

decree petition, the parties have settled the matter due to the intervention of the family members and mediators, resulting in execution of a family arrangement dated 22 November, 2009. The learned Judge, taking into account the subsequent events, passed an order dated 10 June 2011 allowing the application in I.A.No.157 of 2011. The said order has become final.

7. The first respondent filed an application before the Trial Court in I.A.No.74 of 2013 to delete Item No.7 from the list of properties. The said application was dismissed by the Trial Court. The order was upheld by this court in CRP (PD) No.3201 of 2014. The first respondent, thereafter, filed a fresh suit in OS.No.54 of 2015 before the Sub-Court, Thiruvallur, to set aside the decree dated 13 November, 2007.

8. The learned Subordinate Judge, Thiruvallur notwithstanding the order passed in I.A.No.157 of 2011 considered the application in I.A.182 of 2009 and appointed an Advocate Commissioner to divide the properties by metes and bounds. The said order is the subject matter of this Civil Revision petition.

9. The Trial Court earlier allowed the application in I.A.No.157 of 2011, which was filed on the strength of the family arrangement dated 22.11.2009. The said order has become final. There is no question of taking up the application in I.A.No.182 of 2009 thereafter, for appointing Advocate Commissioner to pass a final decree. Since there was no challenge made to the order in I.A.No.157 of 2011, the learned Subordinate Judge, Thiruvallur, was not correct in appointing the Advocate Commissioner in I.A.No.182 of 2009. The entire controversy has arisen on account of the action of the petitioner in prosecuting I.A.No.182 of 2009 even after passing the order in I.A.No.157 of 2011. In view of the order in I.A.No.157 of 2011, the Trial Court was not correct in passing the impugned order. I am therefore constrained to set aside the impugned order in I.A.No.182 of 2009.

10. In the result, the order dated 26 June 2014 in I.A.No.182 of 2009 is set aside. However, I make it clear that this order would not stand in the way of the parties from taking appropriate proceedings before the jurisdictional Court for appropriate relief.

K.K.SASIDHARAN,J.

dna

11. In the up shot, I allow the Civil Revision Petition. No costs.
Consequently, connected miscellaneous petition is closed.

09.06.2017

dna/svki

To

The Subordinate Court,
Thiruvallur District.

C.R.P.(N.P.D.) No.2737 of 2015

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