

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Civil Revision Petition (NPD) No.882 of 2014
and
M.P.No.1 of 2014

D.Ramasamy ... Petitioners/1st Respondent/1st Defendant

..Vs..

1.N.Marappan

2.Pavayee@Thangamani

3.M.Karthikeyan

4.Rajammal

5.M.Vijayakumar ... Respondents 1 to 5/Petitioners/Plaintiff

6.D.Muthusamy

7.Minor Sugantha

D/o.D.Muthusamy

Rep.by Father & natural

Guardian i.e.,2nd petitioner

8.Nallammal .. Respondents 6 to 8 /Respondents 3,4&6/Defendants 3,4&6

Respondents 6 to 8 are not necessary party

Hence they are given up for notice.

Prayer: This Civil Revision Petition has been filed under 227 of Constitution of India, to set aside the Fair and Decretal order passed in I.A.No.310 of 2010 dated 5.11.2012 passed by the learned II Additional District Judge, Salem by allowing this Civil Revision Petition.

For petitioners : Mr.Singaravelan
For M/s.M.Srividhya

For R1 to R5 : Mr.S.Kaithamalai Kannan
For R6 & 8 : Given up
For R7 & 9 : Mr.C.Kulanthaivel

ORDER

Challenging the fair and decreetal order passed in I.A.No.310 of 2010 in O.S.No.14 of 2004, dated 5.11.2012 by the learned II Additional District Judge, Salem, the present revision petition has been filed.

2. Heard both sides.

3. The petitioners as a plaintiffs filed in O.S.No.14 of 2004 for declaration of title and permanent injunction. The respondent one Mariappan and others filed a suit for partition and separate possession. Both the suits have been tried jointly, after contesting, the suit filed by this petitioner in O.S.No.14 of 2004 has been dismissed and preliminary decree has been passed, against which, the petitioner preferred an appeal, which is pending in A.S.S.R.No.26940 of 2012 for condoning the delay in preferring the appeal. The decree holder in O.S.No.14 of 2004 filed I.A.No.310 of 2010 for passing of final decree and for appointment of Advocate Commissioner to divide the property. After considering

the submissions made by the respondent therein/petitioner herein, Advocate Commissioner was appointed. Challenging the appointment of Advocate Commissioner, the present revision petition has been preferred.

4. The learned counsel for the petitioner would submit that the petitioner is claiming title to entire 'A' schedule property and the appeal is pending. If the commissioner is appointed and final decree is passed, which will affect the rights of the petitioner. Hence, he prayed for setting aside the order for appointment of Advocate Commissioner.

5. Resisting the same, the learned counsel for the respondent would submit that the appointment of Advocate Commissioner will not take away the valuable rights of the petitioner. If the petitioner succeeds in the appeal, he would fairly enjoy the property. Hence, he prayed for dismissal.

6. Considering the rival submissions made by both sides and perusing the typed set of papers, admittedly, the suit filed by the petitioner in O.S.No.14 of 2004 has been dismissed, aggrieved over the same, he has preferred appeal along with the petition to condone the delay, which is still pending. But according to the petitioner, the property has been allotted to him by way of oral partition in the year 1985, which took place between his family members. The respondents are the purchasers from the co-owners. After passing of preliminary decree, the respondents filed I.A.No.310 of 2010 for passing final

decree after appointment of Advocate Commissioner to inspect the property and measure the property, which will not take away the rights of the petitioner. Furthermore, the petitioner has filed the appeal in the year 2012. It is to be noted that for the past five years, the appeal has been in S.R. Stage and delay is yet to be condoned. It clearly shows the malafide intention of the petitioner to drag on the proceedings. So I am of the view that the appointment of Commissioner for inspecting the property and to file the report is no way affect the rights of the petitioner. In such circumstances, if the final decree is passed, it will affect the petitioner only and only the passing of final decree alone can cause hindrance to the petitioner and not the appointment of commissioner even in the appeal stage. Even though, AS.Sr.No.26940/2012 is pending, the petitioner has not taken any steps to disposal of Section 5 Limitation Act petition. So I do not find any reason to interfere the order of appointment of commissioner.

7. Hence, this Civil Revision Petition is dismissed by confirming the appointment of Commissioner. No costs. Consequently, connected Miscellaneous Petition is also closed.

25.01.2017

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To
The II Additional District Judge, Salem

R.MALA,J.,

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