

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4751 of 2015
& M.P.No.1 of 2015

1.G.Reeta
2.G.Ravi
3.G.Selvi
4.B.Baby
5.G.Manivannan
6.Krishnan
7.Praveena
8.Meena
9.Kalpana

.. Petitioners

Vs.

Rukmani Duraiswamy (Died)
1.Sasikala Selvaraj
2.Murugavel
3.Thulasimani
4.Thirunavukarasu
5.Maniammal
6.Rajmohan
7.Manikumar
8.Senthilkumar
9.Thamilselvi
10.Poongothai
11.Saveriar
12.Moorson
13.Jothi
14.Priyadarshini
15.Meena

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the fair and decretal order dated 13.03.2015 made in I.A.No.640 of 2013 in I.A.No.2772 of 1997 in O.S.No.977 of 1992 on the file of the Principal District Munsif Court, Coimbatore.

For Petitioners : Mr.K.Govi Ganesan

For R1 to R10 &
R13 to R15 : Mr.K.Selvakumar

For R11 & R12 : Exparte

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 13.03.2015 made in I.A.No.640 of 2013 in I.A.No.2772 of 1997 in O.S.No.977 of 1992 on the file of the Principal District Munsif Court, Coimbatore.

2.The petitioners are the defendants 12, 14 to 21, respondents 1 to 3 are the plaintiffs 2 to 5 and respondents 4 to 15 are the defendants 2, 4 to 11 and 22 to 24 in O.S.No.977 of 1992 on the file of the Principal District Munsif Court, Coimbatore. Originally, one R.Duraiswami filed the said suit for partition against the respondents 4 to 12 and two others. Plaintiff died and

respondents 1 to 3 and their mother, Rukmani Duraiswamy, the legal heirs of the deceased R.Duraiswami were impleaded as plaintiffs 2 to 5. By the judgment and decree dated 26.07.1996, a preliminary decree was passed, granting $\frac{1}{4}^{\text{th}}$ share to the respondents 1 to 3 and their mother. The respondents 1 to 3 and their mother filed I.A.No.2772 of 1997 for passing of final decree. The petitioners filed I.A.No.640 of 2013 under Section 2 of Partition Act read with Section 151 of C.P.C to order auction of the suit property among the sharers in the presence of the Advocate Commissioner. According to the petitioners, the Advocate Commissioner appointed in I.A.No.2772 of 1997, after inspection of the suit property, filed report on 19.10.2012, stating that suit property with the house cannot be divided and it is indivisible. In view of such report, the auction may be ordered among sharers.

3.The respondents 1 to 3 and their mother filed counter affidavit and submitted that Advocate Commissioner has stated that superstructure in the suit property is mud wall and tiled roof which has no value and therefore, the vacant land may be divided into four equal shares and allot one share to the respondents 1 to 3 and their mother. The Advocate Commissioner has suggested one mode

by dividing into four equal shares and the same mode can be passed as in the final decree. The respondents 1 to 3 are having adjacent house in a small portion at the eastern side and one share divided by Commissioner as per the plan given by the engineer in the western side of the suit property can be allotted to them. Only to drag on the proceedings, the petitioners have filed the application and prayed for dismissal of the said application.

4.The 6th respondent filed counter affidavit, which was adopted by respondents 5, 7 to 9. The 4th respondent filed separate counter affidavit and the same was adopted by the respondents 13 to 15. They also stated that mode of division suggested by Advocate Commissioner as per the plan of engineer may be passed as a final decree.

5.The learned Judge, considering the averments in the affidavit, counter affidavits and materials available on record, held that the petition filed by the petitioners for auction of the suit property is only a delaying tactics on the part of the petitioners. The learned Judge took note of the report of the Advocate Commissioner wherein he has stated that old tiled house is of no value and stated

that Court can consider the division of suit property into four equal shares since, old tiled house with mud wall with old tiles will not be in a good condition for living. For the above reasons, the learned Judge dismissed the application.

6. Against the said order dated 13.03.2015, made in I.A.No.640 of 2013 in I.A.No.2772 of 1997 in O.S.No.977 of 1992, the petitioners have come out with the present Civil Revision Petition.

7. Heard the learned counsel for the petitioners as well as the respondents 1 to 10 and 13 to 15 and perused the materials available on record.

8. The contention of the learned counsel for the petitioners that Advocate Commissioner has filed report stating that the property is indivisible is contrary to the facts. From the impugned order of the learned Judge, it is seen that Advocate Commissioner has suggested mode of division of suit property. Except the petitioners, other sharers have accepted the report of the Advocate Commissioner suggesting division of the property into four equal

parts. Section 2 of Partition Act, 1893 is extracted here under:

"2.Power to Court to order sale instead of division in partition suits- *Whether in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds."*

As per Section **2 of Partition Act, 1893**, the sale can be ordered in the suit for partition only when the suit property cannot reasonably or conveniently divided and when the sale of the property and distribution of sale proceeds will be more beneficial for all the share holders. A share holder or share holders collectively having one moiety or more can ask for sale of the property.

9. In the present case, the Court has come to the conclusion that property can be divided as per the plan given by the Advocate Commissioner and petitioners have not stated whether they have 50% of the share in the suit property. For the above reasons, the reasoning of the learned Judge does not suffer any irregularity.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.12.2017

Internet: Yes/No
Index: Yes/No
gsa

To

The Principal District Munsif,
Coimbatore.

V.M.VELUMANI, J.

gsa

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