

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2886 of 2012
& M.P.No.1 of 2012

Jayaraman

.. Petitioner

Vs.

1.Subathirai
2.Kaikeyee
3.Vedhavalli
4.Pasupathi
5.Jayalakshmi
6.Amuthavalli
7.Venkatesan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.04.2012 made in I.A.No.57 of 2012 in O.S.No.39 of 1996 on the file of the Principal District Munsif Court, Ariyalur.

For Petitioner : Mr.S.Gunalan

For R1 to R7 : Mr.M.V.Krishnan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 20.04.2012 made in I.A.No.57 of 2012 in O.S.No.39 of 1996 on the file of the Principal District Munsif Court, Ariyalur.

2. The petitioner is the first defendant, respondents 1 to 3 are the plaintiffs 3 to 5 and the respondents 4 to 7 are the legal heirs of the deceased second plaintiff in O.S.No.39 of 1996. The parties are referred to as per their ranks in the suit. The plaintiffs filed suit for partition. A preliminary decree was passed on 17.11.2008. The first defendant/petitioner herein filed I.A.No.57 of 2012 to receive the objections filed by him to the report of the Advocate Commissioner.

3. According to the first defendant/petitioner, the second appeal challenging the preliminary decree is pending before this Court in S.A.No.1008 of 2009. While so, the plaintiffs filed an application for passing final decree and the Advocate Commissioner was appointed, who inspected the suit property and filed his report with plan. The advocate appearing for the first defendant/petitioner did not inform the report filed by the Advocate Commissioner and

therefore, he could not file objection to the report of the Advocate Commissioner. The report of the Advocate Commissioner does not contain the actual facts and the material facts are not included. As the first defendant/petitioner was suffering from jaundice and was taking treatment, he could not contact his advocate and give instructions to file objection to the report of the Advocate Commissioner.

4. The fourth plaintiff filed counter affidavit and opposed the said I.A.No.57 of 2012 and submitted that the contention of the first defendant/petitioner that he was suffering from jaundice is not correct. He has sold one of the suit property and value of the share of the plaintiffs is reduced.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record dismissed the application holding that the Advocate Commissioner has filed a report as per Order 26 Rule 14 of C.P.C. and therefore, objection to the Advocate Commissioner's report is not necessary.

6. Against the said order of dismissal dated 20.04.2012 made in I.A.No.57 of 2012, the present civil revision petition is filed by the

first defendant/petitioner.

7. Heard both sides and perused the materials available on record.

8. From the materials available on record, it is seen that the suit is pending at the stage of passing final decree. The Advocate Commissioner appointed by the Court has filed report with plan after inspecting the suit property. According to the first defendant/petitioner, the report filed by the Advocate Commissioner is not correct. Therefore, he has filed objections, but he could not file the same within the time limit specified and filed objections with the petition to condone the delay in filing the objection. The said application in I.A.No.57 of 2012 was dismissed on the ground that the report was filed under Order 26 Rule 14 of C.P.C. and objection is not necessary. The said reason is not a valid reason.

9. The learned Judge ought to have seen the proceedings pending before the Court for passing final decree. The first defendant/petitioner has right to file objections to the report. It is for the Court to decide whether the said objections are valid or not. If the Court comes to the conclusion that the objections are not valid, the same can be rejected and the Court can pass a final

decree.

10. The learned Judge committed an irregularity on refusing the first defendant/petitioner to file his objections to the report of the Advocate Commissioner. In view of the same, the order of the learned Judge dated 20.04.2012 is liable to be set aside and it is hereby set aside. The learned Judge is directed to take the objections filed by the first defendant/petitioner on file and consider the same on merits and in accordance with law.

11. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2017

Index : Yes/No
dm/kj

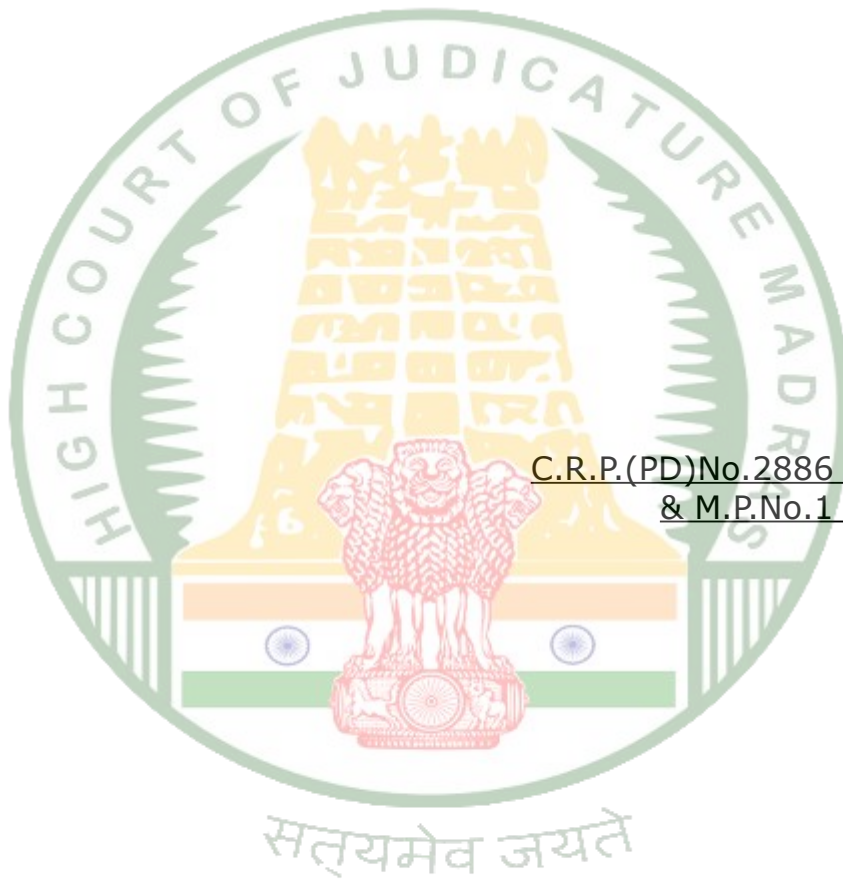
To

The Principal District Munsif,
Ariyalur

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V.M.VELUMANI, J.

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