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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P(PD) (MD)No.1171 of 2017

and

C.M.P(MD)No.5455 of 2017

Ghulam Dasthagir @ Dasthagir Sahib,

:Petitioner/Petitioner
Petitioner/Plaintiff

Vs.

1.Shajakhan
2.Fathima Begum,
3.Anser Begum

:Respondents/Respondents
Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for records relating to the Fair Order and Decreetal Order dated 04.06.2016 in I.A.No.274 of 2013 in I.A.No.32 of 2011 in O.S.No.1789 of 2004 on the file of the Principal District Munsif, Tiruchirapalli and set aside the same.

For Petitioner : Mr.S.Vinod Sathya Lazer

O R D E R

The Suit in O.S.No.1789 of 2004, for partition has been filed by the petitioner on the file of the Principal District Munsif, Tiruchirapalli. The court below has decreed the suit and I.A.No.32 of 2011 has been filed for passing a final decree. In I.A.No.32 of 2011, the Court below has appointed an Advocate Commissioner. The Advocate Commissioner has visited the suit property and submitted his report, wherein, he has suggested that Item No.1 of the suit property can be divided into two partitions leaving common access between two parties and there is a deficit of 16 sq.feet which can be compensated by paying ovalty by the Revision Petitioner herein to second respondent. Since the cattle shed put up by the Plaintiff/Revision Petitioner is in the excess land.

2.Insofar as Item Nos.2 and 3 of the properties are concerned, since, it is a single unit residential building, it is suggested that the Plaintiff/Revision Petitioner being a minor share of 1/3 portion and the first Defendant/Respondent being major share of 2/3 portion, the first defendant/respondent can be allotted the 2nd and 3rd item property with a direction to pay the ovalty to the plaintiff for the 1/3 share.

3.On receipt of the Commissioner's Report, the revision petitioner/plaintiff has filed an application seeking leave of the



Court to sell the property and distribute to the share holders, according to their entitlement. The Court below has considered the Commissioner's Report. The rival contention of the plaintiff as well as the defendants that so far as the item No.1 is concerned, it is divisible in nature and there is no necessity to put item No.1 for sale and share the proceed. Regarding item Nos.2 and 3 are concerned, the Court below has held that the petitioner/plaintiff can be directed to receive the oyalty amount determined by the Court. The learned counsel for the revision petitioner submits that even before passing the final decree, the Court has pre-concluded by suggesting, how the property should be divided he contented that there is no need to divide the property by the way Court suggested but in alternate should be sold in auction and the sale proceeds should be divided as per the entitlement.

4.This Court finds no reason to entertain the revision petition, since, to sell the property in the partition decree there must be definite finding to the effect that the property is indivisible in nature.

5.In this case, so far as item No.1 is concerned, it is a proved fact that it is divisible property and the Commissioner's report has also suggested, how it should be divided. Regarding, Item Nos.2 and 3, the Court has concluded that it need not to be divided, since, it is a one unit residential premises. As the matter of fact, Court has suggested that, item Nos.2 and 3 which are residential premises can be given to major share holder compensating the minor share holder by oyalty. The minor share holder is the present revision petitioner/plaintiff, even though the revision petitioner is interested to sell the property and share the sale proceeds, this may cause serious prejudice to the major shareholders.

6.Under such circumstances, on rejection of plea to sale the properties no prejudice will be caused to the revision petitioner, since the Court has to fix the oyalty amount, after considering the rival contentions of the parties and after arriving at a consensus between them, regarding the price of the property.

7.Hence, this revision petition is dismissed. No order as to costs. Consequently, the connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar



To

The Principal District Munsif,
Tiruchirapalli.

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