



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) No.2175 of 2017
and
CMP (MD) No.10684 of 2017

1) Saleem
2) Syed Sulaiman

... Petitioners/Respondents/
Respondents/Plaintiffs

vs.

I.Idurus

... Respondent/Petitioner/
Petitioner/Defendant

Petition filed under Article 227 of the Constitution of India, against petition and order dated 22.06.2017 made in I.A.No.260 of 2017 in I.A.No.607 of 2015 in O.S.No.142 of 2014 on the file of Principal Sub Court, Tenkasi.

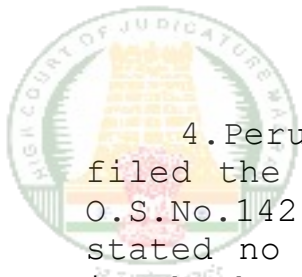
For Petitioner : Mr.A.Arumugam
For Respondent : Mr.A.Haja Mohideen

ORDER

This revision petition has been filed against petition and order dated 22.06.2017 made in I.A.No.260 of 2017 in I.A.No.607 of 2015 in O.S.No.142 of 2014 on the file of Principal Sub Court, Tenkasi.

2.The revision petitioners/plaintiffs filed a suit for partition against the respondent/defendant. A preliminary decree was passed on 13.01.2015, by which, the defendant was entitled to 1/4th share. The defendant filed an application for final decree. In the said application, Commissioner was appointed and he filed a report stating that the property is indivisible. Subsequently, the 1st defendant filed an application under Section 2 of the Partition Act for sale of the property and the same was allowed on 22.06.2017. Against the said order, this revision petition has been filed.

3.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.



4.Perusal of the records shows that the petitioners have not filed the counter in I.A.No.260 of 2017 in I.A.No.607 of 2015 in O.S.No.142 of 2014. It is not the case where the petitioner has stated no counter to be filed. The only issue before this Court is whether the learned Judge was right in allowing the application when no counter has been filed without giving ample opportunity to file counter. In my considered opinion, to meet the ends of justice, an opportunity may be given to the petitioners to file counter.

5.Accordingly, the impugned order dated 22.06.2017 made in I.A.No.260 of 2017 in I.A.No.607 of 2015 in O.S.No.142 of 2014 on the file of Principal Sub Court, Tenkasi, is set aside and I.A.No.260 of 2017 is remanded back to the Principal Sub Court, Tenkasi, to decide afresh. The petitioners are directed to file counter within one week from the date of receipt of a copy of this order and the learned Principal Sub Judge, Tenkasi, is directed to dispose of I.A.No.260 of 2017 in I.A.No.607 of 2015 in O.S.No.142 of 2014 within a period of two weeks thereafter. If the petitioners do not file counter within one week from the date of receipt of a copy of this order, the learned Judge is directed to pass order in accordance with law.

With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Tenkasi.

+ 1 CC TO Mr.A.HAJA MOHIDEEN, ADVOCATE IN SR No. 92539
+ 1 CC TO Mr.K.MUTHUMALAI, ADVOCATE IN SR No. 92981

BALA

TE/SKN-RSK/SAR-1 : 16/02/2018 : 2P/4C

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