



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

C.R.P. (MD) No.1454 of 2018

and

C.M.P. (MD) No.6295 of 2018

Ramasamy Konar

: Revision petitioner/petitioner /
1st Respondent/1st Defendant

Versus

1.Arumugathammal
2.Uchimahali
3.Petchiammal
4.Ramalakshmi

: Respondents/Respondents/
Petitioner 2 to 4 Respondent/
Plaintiff, 2 to 4 Defendants

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., praying to set aside the fair order and decreetal order passed in I.A.No.235 of 2017 in I.A.No.413 of 2013 in O.S.No.63 of 2008 dated 07.02.2018 on the file of the Principal Subordinate Judge, Tirunelveli.

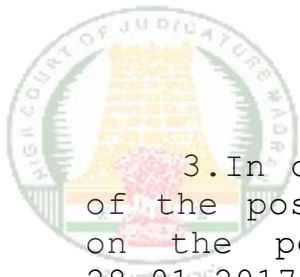
For Revision Petitioner : Mr.T.Selvan

O R D E R

This Civil Revision Petition challenges the order passed in I.A.No.235 of 2017 in I.A.No.413 of 2013 in O.S.No.63 of 2008 dated 07.02.2018 on the file of the Principal Subordinate Judge, Tirunelveli.

Heard learned counsel for petitioner.

2.The 1st respondent has preferred O.S.No.63 of 2008, towards partition of her 1/5 share in the suit properties and by judgment dated 21.07.2009, a preliminary decree was passed. In furtherance of the same, 1st respondent moved final decree application in I.A.No.413 of 2013. Since the petitioner did not appear, he was set exparte on 10.03.2014. For physically effecting partition Advocate Commissioner was appointed, who in turn after effecting notice to both parties filed her report on 10.04.2017. In the meantime, petitioner has filed I.A.No.235 of 2017, seeking to set aside the exparte order against him, on the ground that his counsel did not inform him about the hearing and only after getting the notice of advocate Commissioner for her visit on 18.03.2017, he came to know about the case.



3. In dismissing such petition, the Court below has taken note of the position that the advocate commissioner has served notice on the petitioner through registered post on 24.01.2017 and 28.01.2017 and the present petition has been filed two months thereafter; after setting the petitioner exparte Commissioner was appointed and she inspected the property on various dates and filed her report; if the present petition is allowed, again fresh Commissioner has to be appointed, which would cause prejudice to the 1st respondent/plaintiff and that the petitioner will not be prejudiced in any way since the petitioner can participate in further proceedings.

4. In the said circumstances, this Court is of the view that the order of the Court below suffers no error, calling for interference. Hence, the Civil Revision Petition shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition also stands dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Principal Subordinate Judge,
Tirunelveli.

+1cc to Mr.T.Selvan, Advocate Sr.No.73892

SJ

VB/KAK/SAR3/14.08.2018/2P/3C

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