



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.09.2018
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) No.2160 of 2016
and
C.M.P. (MD) No.10088 of 2016

Ravindran

..... Revision Petitioner/Petitioner/
/4th Respondent/LR of the 1st Defendant

vs.

K.Velusamy Gounder

..... Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.09.2016 made in I.A.No.217 of 2013 in O.S.No.949 of 1989 on the file of the learned District Munsif, Palani.

For Petitioners : Mr.AL.Kannan
for Mr.VR.Shanmuganathan

For Respondent : Mr.R.Subramanian

ORDER

The legal representative of the first defendant in O.S.No.949 of 1989 on the file of the learned District Munsif, Palani is the revision petitioner herein. The said suit was filed by the respondent herein seeking the relief of partition and separate possession. The father of the revision petitioner herein was shown as the first defendant. There are four other defendants. Preliminary decree was passed on an exparte basis on 23.07.1996. The attempts of the revision petitioner herein to set aside the said exparte preliminary decree were in vain. The preliminary decree has now become final. As per the preliminary decree, the plaintiff as well as the revision petitioner are having 1/4th share each in the suit properties.

2. The plaintiff filed I.A.No.308 of 2007 for passing final decree. The Advocate Commissioner was appointed to divide the property by metes and bounds. The Advocate Commissioner filed his report. To scrap the same, the revision petitioners filed I.A.No.217 of 2013. The said IA was dismissed by order dated 08.09.2016. Questioning the same, the present Civil Revision Petition has been filed.



3. Heard the learned counsel on either side.

4. The learned counsel for the petitioner drew the attention of this Court to Order 26 Rule 13 and 14 of CPC. The said provision reads as under:

"13. Commission to make partition of immovable property:

Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. Procedure of Commissioner:

(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directly by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The commissioner shall then prepare and sign a report or the Commission (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit."

5. In this case, the revision petitioner raised two specific objections. The first objection is that the allotment of the suit items have been made on an arbitrary basis. More than anything else, the respective value of the various items have not been taken into account. This Court went through the contents of the report of the Advocate Commissioner. It is seen that the objections raised by the revision petitioner herein are very much valid. The Court below has not properly considered the objections raised by the revision petitioner herein. In this view of the matter, the order



impugned in this Civil Revision Petition is set aside. This Civil Revision Petition stands allowed. The report of the Advocate Commissioner is scrapped. No Costs. Consequently, connected miscellaneous petition is closed.

6. This Court cannot simply leave the matter by allowing the Civil Revision Petition. It is seen that the plaintiff is aged more than 80 years. He ought to see the fruits of the decree. Therefore, the Court below is directed to appoint a new Advocate Commissioner and the entire exercises shall be concluded within a period of four weeks from the date of receipt of a copy of this order. All the parties are given further three weeks time to lodge their respective objections. The Court below shall consider the same and pass appropriate orders and dispose of the final decree proceedings, within a period of two months thereafter.

7. Further, the revision petitioner has also not filed his counter in the IA. The revision petitioner has to necessarily extend his fullest co-operation for the expeditious disposal of the final decree proceedings.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The District Munsif, Palani.

+1CC to Mr.R.Subramanian, Advocate, SR.No.82907

C.R.P. (MD) No.2160 of 2016
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PJL
ES/RP/SAR 1/10.10.2018/3P/3C