

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.4777 of 2011

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 10.10.2011 passed in I.A.No.363 of 2011 in O.S.No.112 of 1999 by the Junior Civil Judge at Amadalavalasa, accepting the report of Commissioner for dividing plaint A,B and C properties into two equal shares and to ascertain the profits payable to the plaintiff in the suit.

2. The Commissioner filed his report and thereupon, the petitioner/defendant filed application under Order XVIII Rule 17 of CPC to reopen I.A.No.363 of 2011 in O.S.No.112 of 1999, to re-entrust the warrant of commission to the Commissioner for re-partition of suit A and B schedule properties and lot-2 of C schedule property and to direct the Commissioner to assess the present market value of the house property to enable any of the sharers to purchase the share of other sharers in the lot-1 property since it is impossible to divide the same.

3. It is the specific contention of petitioner that the Commissioner, who was appointed, filed his report before the trial Court. The main reason for filing this petition is that C schedule property is not divisible and therefore, he requested the Court to re-direct the Commissioner to ascertain the market value and for re-partition of A and B schedule properties. But the Court below dismissed the petition on the ground that the petitioner did not file

any objection to the Commissioner's report though it was filed about 5 to 6 years back and therefore, question of reopening does not arise.

4. Aggrieved by the orders, the present revision is filed, mainly contending that the terraced house property is not divisible and the Court may direct the Commissioner to ascertain the value of the property so as to enable one of the sharers to purchase the same. But the trial Court did not accept this contention on the sole ground that no objection for the report of the Commissioner was filed though report was filed about six years ago.

5. Finally, the counsel for petitioner reiterated the contentions urged in the petition and requested this Court to set aside the order impugned, by directing the trial Court to entrust the warrant for the purposes narrated above.

6. The counsel for respondents opposed the petition while contending that when the petitioner did not file any objection for division of property as per the Commissioner's report, she is not entitled to such prayer at this stage.

7. The petition is filed under Order XVIII Rule 17 of CPC, which deals with recall of witnesses who were already examined or subject to the law of evidence and put such question to them as the Court thinks fit. But the petitioner filed I.A.No.363 of 2011 to reopen the evidence, but not for recalling the evidence. There is some purpose

in quoting the provision of law. But the petitioner, even without knowing the provision of law under which she is required to file petition, filed the petition under Order XVIII Rule 17 of CPC before the trial Court and the same is not maintainable under law for reopening of the enquiry in I.A.No.363 of 2011.

8. The only contention before this Court is that lot-2 of "C" schedule property is not possible for division and therefore, the present market value is to be enquired into by the Commissioner so as to enable one of the parties to the suit to purchase the property.

9. Section 2 of Partition Act, 1983, deals with the power of the Court to order sale instead of division in partition. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstances, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards direct a sale of the property and a distribution of the proceeds.

10. It appears that Section 3 of Partition Act, 1983, which deals with the procedure when sharer undertakes to buy. If, in any case in which the Court is requested under the last foregoing section to direct a sale, any, other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

11. The petitioner, in stead of invoking the provisions of Partition Act, 1983, subject to applicability, filed this petition to reopen the enquiry in I.A.No.363 of 2011 and re-entrust the warrant for partition of A and B schedule properties and lot 2 of 'C' schedule property while directing the Commissioner to ascertain the market value of house property. But such re-entrustment cannot be ordered as no-objection was filed on the report of the Commissioner though it was filed about 5 to 6 years prior to filing of the petition. Therefore, dismissal of the petition by the Court below cannot be faulted on this ground alone. If the petitioner feels that lot 2 of C schedule property is not fit for division, the appropriate remedy is available under the provisions of Partition Act, 1983 but not under Order XVIII Rule 17 of CPC. Therefore, the order of the trial Court does not suffer from any illegality warranting interference by this Court while exercising power under Article 227 of the Constitution of India. Consequently, the revision is liable to be dismissed as it lacks merit.

12. In the result, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

7th March, 2018

sj

