**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CIVIL REVISION PETITION No.5889 OF 2018**

**O R D E R**:

The civil revision petition is filed questioning the order dated 30.08.2018, passed by the Additional Senior Civil Judge, Narasaraopet, in I.A.No.769 of 2017 in O.S.No.126 of 2013, wherein the application filed by the1st respondent-plaintiff under Order XX Rule 18 and Section 151 of C.P.C, seeking to appoint an Advocate Commissioner, to divide the suit schedule property into nine equal shares and allot four shares to the petitioner/plaintiff with separate possession as per the preliminary decree dated 6.4.2017, was allowed.

It is the case of the petitioner-2nd defendant that the Court below has no power to appoint an advocate commissioner to divide the plaint schedule property under Order XX and Rule 18 of C.P.C while the appeal against the preliminary decree is pending before the Appellate Court. It is also contended that once the allotment of shares is completed, nothing remains in the appeal and hence the very appointment of advocate commissioner under Order XX Rule 18 of C.P.C, is unsustainable in law and hence the impugned order is liable to be set aside.

The facts on record disclose that the 1st respondent-plaintiff filed a suit in O.S.No.126 of 2013 on the file of the Court below seeking partition of the plaint schedule properties into nine equal shares and to allot four such shares to the plaintiff with separate possession free from any obstructions from the defendants in any manner and one share to the 1st defendant and four shares to the 2nd defendant and for costs and other reliefs. After a full trial, the

Court below passed a preliminary decree on 6.4.2017. As per the preliminary decree, the plaint schedule property shall be divided into nine equal shares by metes and bounds. Out of nine shares, the plaintiff is entitled for four shares and the 1st defendant is entitled for one of such share, while 2nd defendant is entitled to four out of nine shares in the suit schedule property. There is no stay against the preliminary decree. It is further stated that the plaintiff requested the defendants to cooperate in allotting the shares, but they did not hear the same and are postponing the same on one pretext or the other. Hence the petitioner filed the impugned petition seeking appointment of an advocate commissioner to divide the suit schedule property into nine shares.

The 1st defendant was set *ex parte* while the 2nd defendant filed his counter denying the allegations made in the petition, stating that the suit schedule property is a house and as the 2nd defendant is residing in the same house since last 60 years, partition of the same is not possible. It is pleaded that the plaintiff is in possession and enjoyment of her shares in the plaint schedule property for the last 15 years and appointing advocate commissioner for the allotment and dividing the shares of the plaint schedule property is not necessary.

The Court below, after considering the material on record allowed the impugned application appointing one Smt Sk. Himambi, as advocate commissioner to divide the plaint schedule property into nine equal shares and allot four shares to the petitioner/plaintiff and allot one such share to the 1st defendant and four shares to 2nd defendant and directed the commissioner to return the warrant on or before 15.9.2018. Thereafter the

Commissioner executed the warrant after giving notice to both sides and submitted his report to the Court below dividing the plaint schedule property into nine equal shares, allotting four shares to the plaintiff, one such share to the 1st defendant and four shares to the 2nd defendant.

In the circumstances, appointment of an advocate commissioner to divide the plaint schedule property among the plaintiff and the defendants as per their entitlement, cannot be found fault with and the Court below has rightly allowed the impugned petition. It is to be noted that when the plaintiff requested the defendants to cooperate in allotting the shares, the defendants did not care the words of the plaintiff and hence the plaintiff filed the impugned petition. If really the defendants agreed for the proposal of the plaintiff in dividing the plaint schedule property, the need of filing the impugned application would not arise. Under the circumstances, there are no grounds to interfere with the order of the Court below.

As a matter of fact, the defendants ought to have cooperated with the plaintiff in allotting the shares, but they failed to do so. Having not done so, one cannot find fault with the impugned order of the Court below. There are no merits in the civil revision petition.

Accordingly, the civil revision petition is dismissed. No order as to costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

**C. PRAVEEN KUMAR, J**

Date:30.11.2018
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