

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	17.06.2019
Pronounced On	26.06.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.1358 of 2015
and
M.P.No.1 of 2015

A.Edwin Raj

... Petitioner

vs.

1.A.Ruban David

2.A.Simiyon

3.A.Ruby

4.A.Leena Ellan

5.A.Elizabeth Rani

6.A.Edison

7.A.Victoriya

8.A.Meekal

... Respondents

Prayer: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.150 of 2014 in O.S.No.4721 of 2012 dated 06.03.2015 on the file of XVIII Additional City Civil Court, Chennai.

For Petitioner : M/s.V.Kayalvizhi

For Respondents : No appearance

ORDER

The present Civil Revision Petition is directed against the fair and decretal order dated 06.03.2015 passed by the XVIII Addition City Civil Court, Chennai in I.A.No.150 of 2014 in O.S.No.4721 of 2012.

2.By the impugned order the said Court has allowed the I.A.No.150 of 2014 in O.S.No.4721 of 2012 filed by the respondents (plaintiffs) under Order XXVI Rule 1 of C.P.C and has appointed an Advocate Commissioner to divide the suit schedule property into 9 equal shares by metes and bounds and thereby allot the shares to the respondents (plaintiffs).

3.Though respondents' names have been printed in the cause list, there is no representation for the respondents.

4.The parties are the children of late S.Arulappan. The suit property bearing T.No.82, Ground Floor, Gowthamapuram, Chennai-600 011 comprised in Survey No.782/8 (Part), Purasawalkam Village, Chennai District, measuring to an extent of 15.42 sq.metre was allotted to the said late S.Arulappan by the Tamilnadu Slum Clearance Board. Thereafter, he was the owner of the tenement.

5.Thiru S.Arulappan died intestate on 05.12.2004. The property was transferred in favour of the parties by the Tamilnadu Slum Clearance Board on 23.02.2011.

6.The property was in the possession of the petitioner (defendant). According to the petitioner (defendant), ownership was transferred by forging his signature and therefore to get over the same, the respondents (plaintiffs) have filed the suit for partition.

7.The respondents (plaintiffs) have claimed 8/9th share after leaving the 1/9th share in the property to the petitioner (defendant). The petitioner (defendant) had filed his written statement and prayed for dismissal the suit stating that the suit schedule property was only 15.42 sq.meters and therefore cannot be divided into 9 parts as was claimed by the respondents (plaintiffs).

8.In the said suit, the respondents (plaintiffs) filed I.A.Nos.149 and 150 of 2014 for the following reasons:-

- i. I.A.No.149 of 2014 was filed for passing final decree in the suit.

ii. I.A.No.150 of 2014 was filed for appointing an Advocate Commissioner to divide the suit schedule property as 8/9th shares to the respondents (plaintiffs) under Order XXVI Rule 1 of C.P.C.

9.The petitioner (defendant) contested the same, which culminated in an impugned order dated 06.03.2015 vide I.A.No.150 of 2014 in O.S.No.4721 of 2012 with an Advocate Commissioner being appointed for suggesting way and means to divide of Suit Property.

10.Heard Ms.V.Kayalvizhi, the learned counsel for the petitioner.

11.The learned counsel for the petitioner submitted that the extent of property is only 15.42 sq. meters and therefore not divided. The value of the property according to the lower court is only about Rs.2,00,000/ though for the purpose of valuation it has been declared as Rs.20,00,000/-. According to the respondents (plaintiffs) were demanding the huge amount of Rs.6,00,000/- which does not commensurate with the value of the property. She

further submits that now the building situated in the suit schedule property had been demolished by the Tamilnadu Slum Clearance Board, for putting a fresh construction.

12.The learned counsel for the petitioner (defendant) therefore prays for setting aside the impugned order passed under Order XXVI Rule 1 of C.P.C. in I.A.No.150 of 2014 in O.S.No.4721 of 2012.

13.I have gone through the averments. I perused the previous orders passed by this Court. Earlier this case was referred for Mediation to settle the dispute. However, the Mediation has not resulted in settlement of dispute between the parties. The Advocate Commissioner's report has not been filed before this Court and therefore I am not in a position to ascertain what has transpired after the impugned order was passed. The petitioner has rushed to the Court without awaiting for the Advocate Commissioner to give report as to whether the property is divisible or not.

14.Therefore, I find no merits in the present Civil Revision Petition and it is liable to be dismissed.

C.SARAVANAN, J.

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15.Since the suit is of the year 2012. The lower Court is directed to pass final decree within a period of six months from the date of receipt of a copy of this order.

16.The present Civil Revision Petition is dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petition is also closed.

26.06.2019

Index :Yes/No
Internet :Yes/No
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To

1.The XVIII Additional City Civil Court, Chennai.
2.The Section Officer,

V.R.Section, High Court, Madras.

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Pre-delivery order in

C.R.P.(PD).No.1358 of 2015
and
M.P.No.1 of 2015