

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 28.06.2019

ORDER PRONOUNCED ON : 15.07.2019

CORAM

THE HONOURABLE MR. JUSTICE C. SARAIVANAN

**C.R.P.(PD).No.1408 of 2015
and
M.P.No.1 of 2015**

- 1.S.Manoharan
- 2.S.Selvaraj
- 3.S.Ganesan
Mohan (died unmarried)
- 4.Suseela
- 5.Bharathi
- 6.S.Thangaraj
- 7.Kavitha
- 8.Lakshmi
- 9.Rajeswari
- 10.Suresh
- 11.Rajendran

(the 4th petitioner/ 6th defendant in the court below namely S.Mohan died on 10.02.2015 after the order of the court below dated 28.10.2014. He is unmarried and his brothers namely the petitioners 1 to 3 are already on record. Hence no rank has been given in the cause title)

...Petitioners

Vs

- 1.Pappathi
- 2.Manickam (deceased)
- 3.Nataraj
- 4.Kamalakannan
- 5.Babu

(R3 to R5 brought on record as LR's of the deceased R2 viz., Manickam vide court order dated 08.02.2018 made in CMP 14384 to 14386 of 2017 in CRP 1408 of 2015 (VMVJ))

..Respondents

PRAYER Civil Revision Petition filed under Article 227 of the Constitution of India as against the Fair and Decreetal Orders of the learned IV Additional District Judge of Coimbatore, dated 28.10.2014 in I.A.No. 428 of 2014 in I.A.No.625 of 2013 in O.S.No.547 of 2009.

For Petitioners : Mr.V.Nicholas

For Respondents : Mr.P.Valliappan for R1, R3 to R5.

ORDER

The petitioners are the defendants in O.S.No.547 of 2009. The said suit was filed for partition of the suit property. After entering appearance and filing their written statement, the petitioners were set exparte due to their absence. Therefore, a preliminary decree was passed in their absence on 02.09.2013.

2. Thereafter, the respondents filed I.A.No.625 of 2013 for appointing an Advocate Commissioner. In the said proceedings also the petitioners remained absent and an order dated 11.10.2013 came to be passed by appointing an Advocate Commissioner to suggest modes of division of the property, pursuant to which Advocate Commissioner was appointed by the Court.

3. At that stage, the petitioners filed I.A.No.428 of 2014 in I.A.No.625 of 2013 under Order 9 Rule 7 of Civil Procedure Code, to set aside the ex-parte orders dated 02.09.2013 and 11.10.2013 respectively. By the impugned order, the court has dismissed the above application.

4. Aggrieved by the impugned order, present Civil Revision Petition has been filed.

5. Heard, Mr.V.Nicholas, learned counsel for the petitioners and Mr.P.Valliappan, learned counsel for the respondents 1, 3 and 5.

6. The learned counsel for the petitioners relied on the decision of the court in the following case :-

***i. Kasturi 2 and 5 others, vs. Saraanan @
Sakthi Saravanan, 2010 (4) CTC 705***

***ii. iValleswari vs. Kamalakannan and
another, 2010 (1) MWN (Civil) 581;***

7.Per contra, the learned counsel appearing for the respondents submitted that even though the petitioner was set ex-parte, they can always participate in the final decree proceeding and and there is no necessity to interfere with the order passed by the lower Court appointing an Advocate Commissioner and hence prayed for dismissal of this petition.

8.I have considered the rival submissions. In this case the petitioners have not challenged the preliminary decree. Therefore, they are not aggrieved by the preliminary decree passed by the court.

9.Their complaint only is that the order passed in I.A.No.625 of 2013 appointing an advocate commissioner to measure the suit property and to suggest modes for division of the properties and to pass a final decree was without notice.

10. It is the case of the petitioners that they have not received any notice from the court in I.A.No.625 of 2013 and that they came to know only subsequently and therefore they have filed I.A.No. 428 of 2014 to set aside exparte order dated 02.09.2013 in I.A.No.625 of 2013 and exparte order passed on 11.10.2013.

11.Appointment of an Advocate Commissioner by itself will not determine the shares. The report of an advocate commissioner will facilitate the court to pass a final decree in the above partition suit.

12.In case, the petitioners are aggrieved with the report of the Advocate Commissioner, they can make their submissions before a final decree is passed. In case, the report has been already filed by the Advocate Commissioner and if any defects are noticed in it, the Court can always appoint a fresh Advocate Commissioner to give a report. The petitioners shall therefore be heard by the court before passing a final decree.

13. Consequently, I do not find any merits in the present Civil Revision Petition. The present Civil Revision Petition is therefore liable to be dismissed.

14. It is noticed that the suit is of year 2009 and has been kept pending in view of the present Civil Revision Petition. Therefore, the learned V Additional District Judge, Coimbatore before whom the above partition suit is pending is directed to dispose the suit within a period of six months from date of receipt of a copy of this order.

15. The present Civil Revision Petition is dismissed with the above observation. No cost. Consequently, connected miscellaneous petition is also closed.

सत्यमेव जयते

15.07.2019

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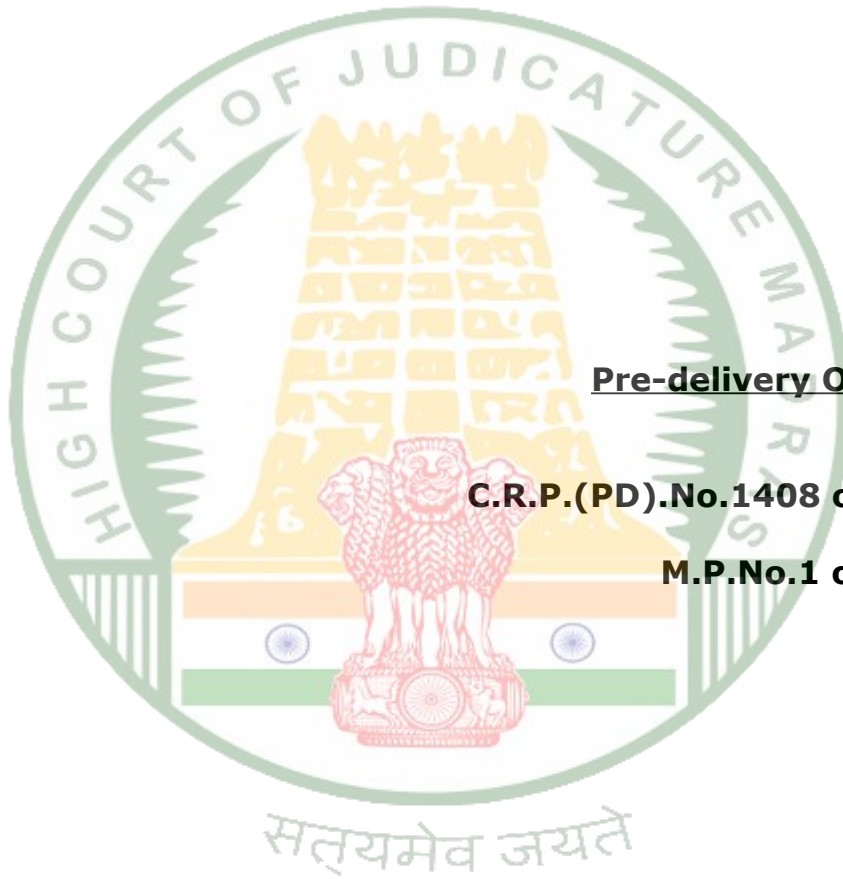
To

The IV Additional District Court,
Coimbatore

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C.SARAVANAN., J.

vkrr



Pre-delivery Order in

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