

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.2291 of 2013

G.Murugesan

... Petitioner

Vs.

1.G.Dhanalakshmi

2.G.Narayanan

3.Audhilakshmi

4.Panchavarnam

5.Manonmani

6.Kamala

7.Sivasankari

8.Kanniammal

9.Sri Ramesh Mangai

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed by the XVIII Assistant City Civil Judge at Chennai in I.A.No.14317 of 2010 in O.S.No.8725 of 1997 dated 24.01.2013.

For Petitioner : Mr.A.Kumar
For Respondents : No Appearance

ORDER

This civil revision petition has been filed as against the order of dismissal dismissing the application filed by the petitioner to pass a final decree in terms of the preliminary decree. The trial Court dismissed the application filed for passing a preliminary decree on the ground that the petitioner has not deposited the advocate Commissioners fee.

2. Heard the counsel appearing for the revision petitioner and there is no representation for the respondent, despite their name printed.

3. Admittedly, a preliminary decree was passed in the suit and on the strength of the same, the present application has been filed to pass a final decree. The trial Court dismissed the application on the ground that the Commissioner fee has not been complied with. It appears that the Commissioner has not been appointed so far. When that being the position, on mere technicalities, substantial right of the parties cannot be deprived. The question of payment of Commissioner fee will arise only after his appointment and inspection. At any event,

since the right of the plaintiff is already crystallized by passing a preliminary decree, his right cannot be denuded to have the benefits of the property divided by metes and bounds in the final decree proceedings. Hence, the order of the trial Court is set aside. Accordingly, the civil revision petition stands allowed. No costs.

4. The trial Court is directed to appoint an Commissioner for division of the properties and fix the fee of the commissioner. The revision petitioner shall pay the fee within one month from the date of the order of the trial Court.

23.04.2019

Index: Yes/No
AT

To
The XVIII Assistant City Civil Judge,
Chennai.

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N.SATHISH KUMAR,J.

AT



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