

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3784 of 2019

and

C.M.P. No. 24805 of 2019

Nallasamy ... Petitioner

-Vs-

1. Nallammal

2. Elayammal

3. Lakshmi

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 25.07.2019 passed in I.A. No. 1 of 2019 in O.S. No. 119 of 2014 on the file of the Principal Sub Court, Erode.

For Petitioner : Mr. V. Regunathan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 1 of 2019 in O.S. No. 119 of 2014 on the file of the Principal Sub Court, Erode, by order dated 25.07.2019.

2. Before the trial Court, the respondents / plaintiffs filed a suit for partition against the revision petitioner / defendant and another. In the said suit, at the trial stage when the PW1 is in the witness box, the first defendant has filed the present IA for appointment of Advocate Commissioner to inspect the suit property with the help of the qualified surveyor and to direct the Commissioner to file a report noting down the physical features of the property.

3. The said application having been heard, was rejected by the trial Court through the impugned order, as against which, the present revision petition has been filed.

4. I have heard Mr. V. Regunathan, learned counsel appearing for the revision petitioner who would submit that, the plaintiffs already filed IA in the year 2017 in I.A. No. 767 of 2017 to appoint an Advocate Commissioner to make a local visit to the suit property, noting down the entire physical features in and around the suit property and that application was allowed by the trial Court, by order dated 26.10.2017 and pursuant to the said order, when the

Advocate Commissioner filed a report, certain aspects noted down and filed by him are not inconsonance with the facts, therefore in order to separate the same and to rectify, it become necessitated to seek for one more appointment of Advocate Commissioner to note down the physical features with the help of the surveyor and file a report to that effect enabling the Court to arrive at a right and just conclusion on the issue raised in the suit.

5. I have considered the said submission made by the learned counsel appearing for the revision petitioner and perused the materials placed before this Court.

6. Admittedly, it is a suit for partition among the brothers and sisters. It is also the case of the revision petitioner as projected by the learned counsel appearing for the revision petitioner that, during his child hood, lot of joint family properties had been sold during the life time of his father and in respect of those issues and in order to prove the same, what are all the properties left and who is in possession of those properties has to be ascertained, then only the issue raised for

which the petitioner is entitled to can be agitated by the petitioner ultimately at the time of preliminary decree and therefore for the said purpose also, an appointment of Advocate Commissioner become necessitated.

7. The said reasoning given by the learned counsel appearing for the revision petitioner as well as the reasons stated in the affidavit in support of the petition are unsustainable, since it is a suit for partition, where the trial commenced, ultimately, the trial Court has to decide, accordingly and share would be allotted by passing preliminary decree.

8. Once the preliminary decree become final, then automatically it would become necessitated to appoint an Advocate Commissioner to visit the property in question and to file a report as the possible divisibility of the property among the co-sharers i.e., plaintiffs and the defendants as per the share allotted through the Court in the preliminary decree, in order to decide the final decree.

9. Before that, if at all any Advocate Commissioner is appointed and he made a visit and filed a report, that would no way help the Court or the parties to decide the issue in the suit.

10. Merely because the similar application filed by the plaintiffs side to appoint an Advocate Commissioner was allowed by the trial Court, the same method cannot be adopted now as what report has been filed by earlier Advocate Commissioner also would not have any effect in deciding the entitlement of the parties to have share over the suit property.

11. In a suit for partition as per the law of inheritance, the share of each of the parties shall be decided by the Court, of course based on the evidence with regard to the benefits, if any enjoyed by any of the parties during the pendency of the suit and those issues can be gone into and decided by the trial Court only on the basis of earlier evidence on behalf of both plaintiffs and defendants and therefore, that issue cannot be decided by having the report of the Advocate Commissioner. Even if a report is filed by the first Advocate Commissioner that will not any way help the Court to arrive a just conclusion on the issue raised in the suit.

R. SURESH KUMAR, J.

vji / sgl

12. In that view of the matter, this Court feels that, the present attempt made by the first defendant to seek for appointment of Advocate Commissioner is totally unwarranted and unjustifiable and therefore, the said attempt has been thwarted by rejecting the said application by the trial Court, through the impugned order, of course rightly, hence it does not warrant any interference.

13. In the result, this Civil Revision Petition fails and hence it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.11.2019

Index: Yes / No

Speaking order / Non speaking order

vji / sgl

To

The Principal Sub Court,
Erode.

C.R.P. (PD) No. 3784 of 2019

and

C.M.P. No. 24805 of 2019