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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.12.2018

DELIEVRED ON : 26.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.2705 of 2018 (NPD)

and

C.M.P. (MD) .No.11840 of 2018

Pakkiyalakshmi

.. Petitioner / Petitioner /
6th respondent/ 6th defendant

Vs.

1.Manorama

... 1st respondent / 1st respondent /
Petitioner / Plaintiff

2.Sri Murugan Works,
a registered Firm No.36/1972,
4/105, Tiruchendur Road,
Palayamkottai,
through its Managing Director.

3.S.Balasubramanian

Kasthuri Lakshmanan (died)

G.Pappa Ammal (died)

... Respondents 2 & 3 /
Respondents 2 & 3 /
Original defendants 1 to 4

M.Ganapathy (died)

4.Somasundari

5.Vasanth Kumari

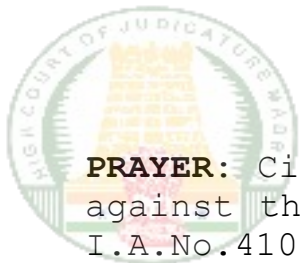
6.K.Periyanayaki

7.P.Sakthi Priya

8.P.Iswariya

9.P.Poorvaj Subramanian

... Respondents 4 to 9/
Respondents 4 to 9/
Respondents / Defendants



PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the order dated 03.11.2018 passed in I.A.No.19 of 2017 in I.A.No.410 of 2005 in O.S.No.220 of 2004 by the learned I-Additional District Munsif, Tirunelveli.

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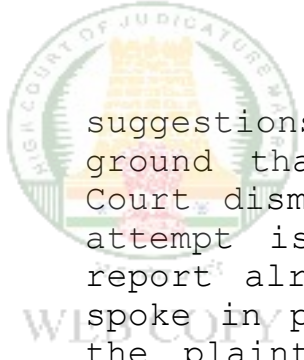
For Petitioner : Mr.V.Ramakrishnan

ORDER

This petition has been filed by the revision petitioner / 6th defendant challenging the order passed by the Court below in I.A.No.19 of 2017, dated 03.11.2018, whereby and whereunder the Court below dismissed the petition filed by the petitioner seeking appointment of Advocate Commissioner.

2.0. It is seen that the first respondent herein as plaintiff has filed the suit in O.S.No.220 of 2004 for dissolution of the 2nd respondent / 1st defendant partnership firm and for rendition of accounts of the same and for final decree to divide the assets of the partnership firm. After trial, the Court below allowed the suit on 28.01.2005 and passed a preliminary decree. An appeal filed by the second and third respondents herein / defendants 1 and 2 against the said judgment and decree of the trial Court was also dismissed. In the meantime, the first respondent / plaintiff filed I.A.No.410 of 2005 for passing a final decree, in which an Advocate Commissioner was appointed and he filed his report and plan. In the meantime, G.Pappa Ammal / original 4th defendant died and her legal heirs viz., the petitioner herein, M.Ganapathy (subsequently died) and Somasundari (4th respondent herein) were impleaded as defendants 5 to 7. They filed their objections to the report of the Advocate Commissioner. Subsequently, the petitioner / 6th defendant along with 5th and 7th defendants filed I.A.No.479 of 2010 to scrap the report of the Advocate Commissioner and to appoint a fresh Commissioner. The Court below dismissed the said petition. Aggrieved by that order, they filed a revision petition in C.R.P.(MD).No.547 of 2011. A learned Single Judge of this Court, by order dated 11.10.2011, dismissed the revision petition, however, with liberty to take proper steps so as to reissue the commission warrant for the purpose of working out their remedies by way of paying necessary Court fee. As against that order, they approached the Hon'ble Supreme Court. The Hon'ble Supreme Court disposed of the Special Leave Petition filed by them holding that it will be open to the petitioners to agitate all the grievances with regard to the report of the Advocate Commissioner before the trial Court.

<https://hcservices.courts.gov.in/hcservices/>
2.1. Thereafter, the petitioner / 6th defendant filed I.A.No.19 of 2017 seeking to appoint an Advocate Commissioner to make



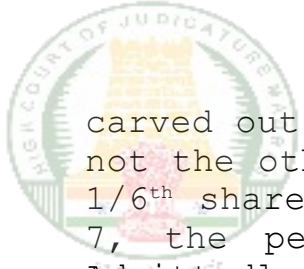
suggestions regarding 1/6th share of the defendants 5 to 7 on the ground that the earlier Advocate Commissioner died. The trial Court dismissed the said petition holding that the petitioner's attempt is in a way to circumvent the Advocate Commissioner's report already filed in the final decree application and put a spoke in passing of the final decree application in favour of the plaintiff, without making any effort to pay the necessary Court fees to her 1/6th share in the partnership firm properties. Aggrieved by that order, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that the allotment of property or payment of money and passing of final decree in a partnership suit cannot be made until fee computed on the amount or value of the share of the assets of the partnership is paid and the said situation has not arisen in the instant case and the revision petitioner is seeking only a preliminary decree on the basis of the admitted share. Therefore, the dismissal of the petition filed petitioner holding that the petitioner has not paid necessary Court fee for getting his relief, cannot be sustained and hence, the impugned order is liable to be set aside.

4. Heard the learned counsel for the petitioner and perused the records carefully.

5. It is not in dispute that a preliminary decree has been passed in the suit and for passing final decree, the first respondent / plaintiff has filed I.A.No.410 of 2005, in which an Advocate Commissioner was appointed and after inspection, he filed his report and plan. It is also not in dispute that the petitioner herein has filed a petition for scrapping of the said Advocate Commissioner's report and for appointment of a fresh Commissioner stating that the Advocate Commissioner has carved out the share of the first respondent / plaintiff alone and the share of the other defendants have not been mentioned. The trial Court has dismissed the said petition holding that the report of the Commissioner is valid and therefore, the same cannot be scrapped. Aggrieved by that order, the petitioner has filed C.R.P.(MD). No.547 of 2011 and this Court, by order dated 11.10.2011, dismissed the revision petition giving liberty to the petitioner to take proper steps so as to reissue the commission warrant for the purpose of working out their remedies by way of paying necessary Court fee. As against that order, the petitioner filed SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court has also dismissed the petition directing the petitioners to agitate all their grievances before the trial Court.

<https://hcservices.courts.gov.in/hcservices/> grievance of the petitioner is that the share of the petitioner and the defendants 5 & 7 are not mentioned in the preliminary decree and the earlier Advocate Commissioner also has



carved out only the share of the first respondent / plaintiff and not the other shares, and in order to suggest the division of such 1/6th share of the petitioner / 6th defendant and defendant Nos.5 & 7, the petitioner wanted to appoint an Advocate Commissioner. Admittedly, in this case, a preliminary decree has already been passed and for passing final decree, an Advocate Commissioner has been appointed and he already filed his report and plan and the same confirmed upto the Hon'ble Supreme Court. As per Section 36 (3) of the Tamil Nadu Court Fees and Suit Valuation Act, no final decree shall be passed, no money shall be paid and no allotment of property shall be made in favour of a defendant in any such suit a, for or on account of, his share of the assets of the partnership, until the fee computed on the amount or value of his share of the assets of the partnership is paid. As per Section 37 (3) of the Tamil Nadu Court Fees and Suit Valuation Act, where, in a suit falling under sub-section (1) or sub-section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the marked value of his share or at half the rates specified in sub-section (2), according as such defendant has been excluded from possession or is in joint possession. If the petitioner wanted to add her share in the preliminary decree, she could have very well filed a petition for supplementary preliminary decree, after paying half of the value of the property as Court fee. As rightly held by the Court below, it seems that in order to get a favourable order, the petitioner has filed this petition under the guise of assisting the Court without paying necessary Court fee.

7. Further, Order 26 Rule 9 of the Code of Civil Procedure envisages that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a Commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Order 26 Rule 11 of C.P.C. describes that in any suit in which an examination or adjustment of account is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment. Further, Order 26 Rule 13 of C.P.C. says that where a preliminary decree for partition has been passed, the Court may, in any case not provided for by Section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree. Therefore, if necessity arises, the Court will do such exercise on his own. No prejudice would be caused to the petitioner in dismissal of the petition. In view of the above, <https://hdservices.ecourts.gov.in/hdservices/> is not inclined to interfere with the order passed by the Court below.



8. In view of the above, this Civil Revision Petition is dismissed at the stage of admission itself. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To
The I-Additional District Munsif,
Tirunelveli.

+1 cc to Mr.V.Ramakrishnan , Advocate SR.No.56472

gcg

order made in
C.R.P (MD) No.2705 of 2018 (NPD)
26.03.2019

KM/ (08.04.2019) 5P 3C