



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.489 of 2019

P.Mahalingam ... petitioner/petitioner/2nd plaintiff

vs.

1.Prabakaran ...1st respondent/respondent/defendant

2.P.Usha @ Maragatham ...2nd respondent/Respondent/1st plaintiff

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to direct the learned Additional Subordinate Judge, Tirunelveli to dispose of the I.A.No.256 of 2017 in I.A.No.338 of 2015 in O.S.No.86 of 2011 on the file of the learned Additional Subordinate Judge, Tirunelveli within a time stipulated by this Court.

For Petitioner : Mr.S.Velrajan

ORDER

This Civil Revision Petition has been filed to direct the learned Additional Subordinate Judge, Tirunelveli, to dispose of the application in I.A.No.256 of 2017 in I.A.No.338 of 2015 in O.S.No.86 of 2011 on the file of the learned Additional Subordinate Judge, Tirunelveli.

2.For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.I.A.No.256 of 2017 was filed by the plaintiffs for selling the suit property in auction among the sharers so as to enable the plaintiffs to bid and pay the proportionate amount due to the other sharers.

4.It is contended by the second plaintiff that in the suit for partition, a decree was passed on 26.11.2014 and on filing I.A.No.338 of 2017, the Commissioner was appointed on 21.07.2015 by the trial Court and he filed the report with plan on 12.08.2016. On perusal of the commissioner report, it is observed that the Commissioner has given a finding that the suit property could not be divided and hence, he suggested that the trial Court may conduct the auction for selling the property and thereby, the parties to get



equal sale amount in consonance with the preliminary decree and the highest bidder will be allotted with the property.

5.Now, the grievance of the second plaintiff is that in I.A.No.256 of 2017, the respondent has not filed any counter statement and hence, the said I.A., was kept pending for a very long time without any progress. It is the grievance of the second plaintiff that the trial Court has not proceeded further and the proceedings in the said I.A., were pending for nearly two years.

6.The further grievance of the second plaintiff is that the said I.A., was not proceeded by the trial Court though the suit is of the year 2011. It is also brought to the notice of this Court that from 06.06.2017 to 26.04.2018 and from 03.07.2018 to 31.01.2019, there is no progress in the said I.A., and hence, the second plaintiff sought for a direction to dispose of the application in I.A.No.256 of 2017.

7.It is represented by the learned counsel for the second plaintiff that the said I.A., was posted for clarification and no clarification is required and called for by the trial Court. Though the second plaintiff has enclosed the copy of the notice order of the trial Court, he is unable to explain anything regarding the status of the case. In the absence of any other details furnished by the second plaintiff regarding the clarification and further proceedings taken by the trial Court except for seeking speedy disposal, this Court is not inclined to give any direction to the trial Court.

8.In view of the above, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Additional Subordinate Judge,
Tirunelveli

CRP(MD) No.489 of 2019

MM

KK/SAR/05.04.2019/ 2P- 2C