



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD)No.1714 of 2019

1.Mohammed Hanifa
2.Aaiysa Kani

...Petitioners

Vs.

1.Saliya Kani
2.Basheer Haq
3.Mohammed Maideen
4.Ashma Begaum
5.Bedisamy
6.Valliammal
7.Abdul Hag
Mohammed Abdul Kahder (died)
8.M.Sultan Beevi

...Respondents

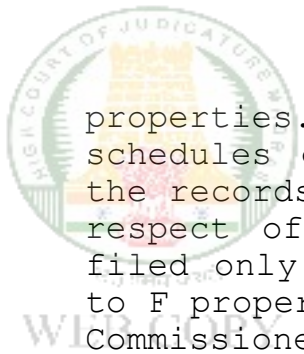
PRAYER: Petition filed under Article 227 of the Constitution of India, to direct the learned Additional District Judge, Dindigul to number the unnumbered final decree petition in O.S.No.284 of 2004.

For Petitioners : Mr.A.R.Sethupathy

O R D E R

This Civil Revision Petition has been filed challenging the return of the Interlocutory Application filed for passing final decree.

2.The learned counsel appearing for the petitioners submitted that with respect to A to F scheduled properties, the court below has already passed the preliminary decree based on the settlement arrived at between the parties. Further, he submits that the said preliminary decree was passed during 2010 and based on the said preliminary decree, one of the respondent has filed a petition in I.A.No.18 of 2011 in respect of his share and the same is pending as on date. Further, in the said I.A., the Court below also appointed an Advocate Commissioner for dividing the properties and in these circumstances, he would contend that numbering the present I.A for passing the final decree would not affect the interest of any of the parties. Since this application is also relating to A to F



properties. Such application is pending in respect of all the schedules except G schedule property. He further submits that all the records from the court below have been sent to the High Court in respect of the appeal in A.S.No.20 of 2011, the present I.A. is filed only for the purpose of passing final decree in respect of A to F properties. Further he contended that even if the same Advocate Commissioner appointed in I.A.No.18 of 2011 it would be satisfied, the requirement of the revision petitioners.

3.Heard the learned counsel appearing for the petitioners and perused the records.

4.The Court below has returned the IA. only for the reason that all the records have been forwarded to the High Court in the above said Appeal. However, the Court below has appointed Advocate Commissioner in I.A.No.18 of 2011 for passing final decree. When such being the position, the Court below may not have any hesitation to number the I.A. and pass similar order by appointing the same Advocate Commissioner to measure the properties and divided the same in respect of the shares of the revision petitioners and file a report and for passing final decree with respect to A to F properties, which the parties to the suit have arrived at amicable settlement and based on such settlement, the Court below has already passed a preliminary decree and against which, no appeal is pending. Therefore, this Court directs the Court the below to number the I.A. and decide the matter on merit and in accordance with law. Further with regard to appointment of Advocate Commissioner to measure the properties the same Advocate Commissioner as appointed by the Court below in I.A.No.18 of 2011 may be appointed.

5.Accordingly, this Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar (Crl.Side)

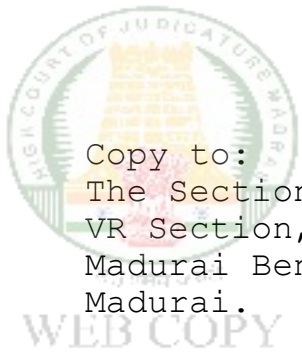
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Sub Assistant Registrar(CS)

nbj

To

The Additional District Judge,
Dindigul.



Copy to:
The Section Officer, (2 Copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.R.SUBRAMANIAN, Advocate (SR-89508[F] dated
26/09/2019)

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JMN(03.12.2019) 3P : 5C