



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

TR.C.M.P. (MD) No.447 of 2018

and

C.M.P. (MD) Nos.10377 & 10378 of 2018

J.S.Jasmine Stella

... Petitioner/Petitioner/Plaintiff

vs.

1.J.S.Godwin

2.The Correspondent,

Angels Matriculation Higher Secondary School,

Office at Diraviyam Gardens,

Tirunelveli Road,

Rajapalayam,

Virudhunagar District. ... Respondents/Respondents/Defendants

Prayer:- This Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the final decree application in I.A.No.91 of 2014 in O.S.No.165 of 2004 on the file of the learned District Judge, Srivilliputhur and transfer the same to any other competent Court.

For Petitioner : Mr.V.R.Shanmuganathan

ORDER

The plaintiff in the suit in O.S.No.165 of 2004 is the revision petitioner before this Court.

2.The suit in O.S.No.165 of 2004 was filed by the revision petitioner herein/plaintiff for partition and separate possession of the suit schedule property. The suit was decreed on 09.06.2009 and after that, final decree proceedings were filed in I.A.No.91 of 2014.

3.From the records, it appears that the said application for appointment of Advocate Commissioner had been taken out for evicting the parties in the final decree proceedings. In the said



application, an Advocate Commissioner had filed his report saying that the property was not partible. Further, it appears that another Commissioner has been appointed by order dated 04.10.2016, wherein, new Commissioner has been appointed as Additional Commissioner and directed to visit the suit property along with the earlier Commissioner and PWD Engineer and both the Commissioners were directed to fix the value of the suit property and to divide the suit property into two equal share of equal value and now, the said report is yet to be tabled.

4. When the matter was pending, the respondents herein/defendants had taken out an application in the final decree proceedings for scraping the Commissioner's report along with the valuation report of a private Surveyor. At this juncture, the revision petitioner has filed the present transfer petition.

5. The learned counsel appearing for the revision petitioner would submit that the learned Judge has expressed his opinion that the Commissioner's report would be taken on file for passing appropriate orders and she was not given an opportunity to put-forth her contention. Therefore, on the apprehension of bias, the revision petitioner seeks to withdraw the final decree application in I.A.No.91 of 2014 in O.S.No.165 of 2004 on the file of the learned District Judge, Srivilliputhur and transfer the same to any other competent Court.

6. Heard the learned counsels.

7. Perusal of the papers makes it clear that the finality had not been reached in the final decree proceedings and the respondents herein/defendants had taken out the application for scraping the Commissioners' report. That apart, the second Commissioner is yet to submit his report. Therefore, the apprehension that the revision petitioner appears is unfounded.

8. In view of the above, there is no merit in the present petition and accordingly, this Transfer Civil Miscellaneous Petition is dismissed with the following direction:

The petitioner and the respondents shall be permitted to file their objections to the Commissioner's report once it is filed and the learned District Judge, Srivilliputhur, after considering such objections, if any, is directed to pass appropriate orders in the final decree proceedings. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.



WEB COPY

Tr.C.M.P.(MD) No.447 of 2018

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

mm

To

The District Judge,
Srivilliputhur.

+1 CC to Mr.VR.SHANMUGANATHAN, Advocate (SR-87842 [F] dated 19/09/2019)

TR.C.M.P. (MD) No.447 of 2018
18.09.2019

VB (07.11.2019) 3P 3C