



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2020

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) .No.542 of 2020

and

C.M.P (MD) .No.3399 of 2020

Mani

.. Revision petitioner/4th Respondent/
4th Defendant

Vs

1.Palaniammal
2.Dhanalakshmi
3.Vengan
4.Kumaravel
5.Chinnathambi

... Respondents 1&2/Petitioners/
Plaintiffs

... Respondents 3 to 5/Respondents 1
to 3/ Defendants 1 to 3

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.02.2020 passed in I.A.No.184 of 2018 in O.S.No.82 of 2013 on the file of the Addl. District Judge, Dindigul.

For Petitioners

: Mr.R.S.Sivaram

For R1 and R2

Caveator

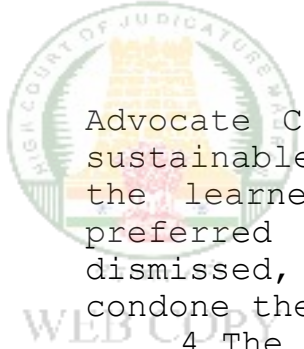
: Mr.J.Madhu,

O R D E R

This Civil Revision Petition is directed against the appointment of an Advocate Commissioner in a final decree proceedings. The revision petitioner, who is one of the defendants in the suit, appears to have preferred an appeal before this Court and the same is pending in A.S.SR.No.52181 of 2018. The revision petitioner has challenged the appointment of an Advocate Commissioner mainly on the ground of pendency of Appeal Suit.

2.This Civil Revision Petition is preferred by one of the defendants in the suit in O.S.No.82 of 2013 on the file of the Additional District Court, Dindigul, filed by the respondents 1 and 2, for partition. On 16.02.2016, a preliminary decree was passed by the learned Additional District Judge, Dindigul. Thereafter, the plaintiffs, who succeeded in the partition suit, filed an application for passing of final decree in I.A.No.184 of 2018 before the trial Court. In the said I.A., the learned Additional District Judge, Dindigul, has appointed an Advocate Commissioner for division of property in the presence of all parties. Challenging the order of the appointment of an Advocate Commissioner in the final decree application, the present Civil Revision Petition is preferred.

3. The order of the lower Court is challenged on the main ground that the appeal is pending before this Court as against the preliminary decree. It is submitted that the appointment of an



Advocate Commissioner, during the pendency of the appeal, is not sustainable. This argument has no substance, as it is represented by the learned counsel appearing for the caveator that the appeal preferred by the revision petitioner before this Court is also dismissed, as the petition filed by the revision petitioner to condone the delay in filing the appeal suit is dismissed.

4. The learned counsel appearing for the revision petitioner submitted that the petitioner has preferred a Special Leave Petition before the Hon'ble Supreme Court and therefore, the order of the lower Court for appointing an Advocate Commissioner should be stayed. He further submitted that the petitioner was not heard by the lower Court before appointing an Advocate Commissioner and therefore, the order of the lower Court is liable to be set aside on the simple ground that the petitioner was not heard.

5. In every case of partition, if a preliminary decree is passed, the plaintiff, who has succeeded in getting the preliminary decree for partition, is entitled to file a final decree application. At the initial stage of final decree proceedings, the first step that would be taken by the plaintiff is to get appointment of an Advocate Commissioner, so that he will inspect the suit properties and divide the suit properties as per the preliminary decree, after suggesting modes of division in accordance with the preliminary decree. This initial step in the final decree application will not be stayed by the appellate forum to save time.

6. Normally, the revision petitioner will get an order of stay of passing of final decree alone. Since the process of appointment of an Advocate Commissioner and the Commissioner's report will take substantial time, to shorten the litigation, it is always preferable to have the Advocate Commissioner appointed and permit the final decree proceedings to go on with a limited stay of passing of final decree, even by the appellate Court where the defendant, who suffered the preliminary decree has filed an appeal against the preliminary decree.

7. In the said circumstances, this Court is not inclined to entertain this Civil Revision Petition. However, it is open to the revision petitioner to approach the Hon'ble Supreme Court to seek interim order. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



Ns

To

The Additional District Judge,
Dindigul.

WEB COPY

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purpose, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

C.R.P. (MD) .No.542 of 2020
and
C.M.P (MD) .No.3399 of 2020

KK(16.07.2020) 3P 2C