



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 28.08.2020

Delivered on : 18.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD) No.2154 of 2015

and

M.P. (MD) No.1 of 2015

Selvaraj

: Petitioner/Petitioner/Plaintiff

Vs

1.Margeret

2.Thiraviyam Selvakumar

3.Kiruba Jonapark Rani

4.Hendry Raja

5.Maria Lilly Pushpam

: Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.221 of 2014 in O.S.No.18 of 2013 on the file of Additional District and Sessions Judge, Dindigul, dated 11.03.2015.

For Petitioner : Mr.M.P.Senthil

For Respondents 1 - 4 : No appearance

For Respondent 5 : Mr.H.Lakshmi Shankar

ORDER

This Civil Revision Petition is directed against the order of the learned Additional District and Sessions Judge, Dindigul, in I.A.No.221 of 2014 in O.S.No.18 of 2013.

2.Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the fifth respondent. No representation for the respondents 1 to 4.

3.The revision petitioner is the plaintiff in the suit in O.S.No.18 of 2013. The said suit is for declaration that the final decree passed against the petitioner and other defendants was not acted upon, for permanent injunction restraining the fifth defendant from alienating or encumbering and from interfering with the petitioner's joint possession over the suit properties along with defendants 1 to 4 and for partition of petitioner's half share in the suit properties. The revision petitioner and the fifth respondent herein are the son and daughter of one Arockiam. The respondents 1 to 4 are the wife and children of one Amal Raj who is also a son of the said Arockiam.

<https://hcservices.courts.gov.in/hcservices/> 4.The revision petitioner in the plaint admitted that the fifth



respondent earlier filed a suit for partition of her 1/5 share in the suit properties in O.S.No.16 of 1975 on the file of the Sub Court, Dindigul which was later transferred to District Munsif Court, Dindigul, and renumbered as O.S.No.1924 of 1981.

5.It is also admitted that the said suit was decreed and a preliminary decree and final decree were passed. It is the specific case of the revision petitioner that the fifth respondent had not taken possession of any of the suit properties even after the final decree and execution petition. It is to be noted that the final decree was passed in I.A.No.2506 of 1981 and that the fifth respondent filed an execution petition in E.P.No.167 of 1991. It is the specific case of fifth respondent that the property allotted to the fifth respondent was delivered to her in execution of the final decree on 24.08.1995. Similarly, the fifth respondent also claimed right in respect of 1/3 share apart from 1/6 share allotted to her on the basis of the Will. It is stated by the fifth respondent that as legatee under the Will, he also got delivery of the properties allotted to the fifth respondent's mother in E.P.No.111 of 2003 on 05.01.2004. The Commissioner's report and plan are referred to in the written statement filed by the fifth respondent who is the fifth defendant in the suit.

6.Without reference to any other subsequent event that had happened after the delivery of properties pursuant to the final decree in the year 1995 or 2004, the revision petitioner has come forward with the case that in or about 1985 there was a panchayat at the instance of the revision petitioner/plaintiff and that as per the suggestion of the panchatdhars, the fifth defendant/fifth respondent herein and another sister (who is no more) had agreed to receive a sum of Rs.2,50,000/- each towards their share. So saying, it is the further case of the revision petitioner that the preliminary and final decree and the orders passed in execution petition were not acted upon and that the fifth defendant never obtained delivery of the properties allotted to her in the partition suit.

7.In the above circumstances, the revision petitioner filed I.A.No.221 of 2014 for appointment of an Advocate Commissioner to note down the physical features in the suit properties, particularly, to note down the existence of any dividing ridge in any of the suit properties as per the terms of the final decree passed in I.A.No.2506 of 1981 in O.S.No.1924 of 1981 on the file of the Principal Sub Court, Dindigul. The said petition was opposed by the fifth respondent and the lower Court dismissed the petition holding that the Advocate Commissioner's report may not be relevant to decide the issues involved in the suit where the validity of the final decree passed in I.A.No.2506 of 1981 in O.S.No.1924 of 1981 alone has to be decided. This Court, having regard to the sequence of events as per the pleadings, is unable to accept the case of the revision petitioner in challenging the final decree passed in the earlier suit



for partition on the ground that it was not acted upon. Judgment or a decree in a Civil Suit cannot be challenged on the ground that it was not acted upon. *Prima facie* this Court is of the view that the plaintiff has come forward with the vexatious suit and he is estopped from challenging the decree in which he is a party. The lower Court did not go into all other legal and factual issues except pointing out that the suit has to be decided not on the basis of the Commissioner's report but by answering all the legal and factual issues. Going through records this Court is unable to find any *bona fides* in the petition seeking appointment of Commissioner. Having regard to the nature of relief prayed for in the suit, the Commissioner's application is unwarranted. This Court does not find any error or irregularity in the order of trial Court dismissing the petition for appointment of Advocate Commissioner.

8.As a result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar(CS)

SRM

To

The Additional District and Sessions Judge,
Dindigul.

Copy to

The Section Officer, (2copies)
V.R Section,
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-17360[F] dated 18/09/2020)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-17601[F] dated 21/09/2020)

C.R.P. (MD)No.2154 of 2015
18.09.2020

AC (CO)

KB(24.09.2020) 3P 6C

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