

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.07.2021**

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.M.A.No.1668 of 2018
and C.R.P.(PD) No.2293 of 2018
and C.M.P.Nos.13149, 14343 of 2018

C.M.A.No.1668 of 2018:

1.Samiyathal
2.Velusamy

... Appellants

Vs

Palanisamy

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 104 Order XLIII Rule 1 (r) of CPC, against the Fair and Final Order dated 22.06.2018 passed in I.A.No.16 of 2018 in O.S.No.12 of 2018 on the file of II Additional District Court, Erode.

C.R.P.(PD) No.2293 of 2018:

1.Samiyathal
2.Velusamy

... Petitioners

Vs

Palanisamy

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of

India, against the Fair and Final Order dated 22.06.2018 passed in I.A.No.73 of 2018 in O.S.No.12 of 2018 on the file of II Additional District Court, Erode.

For Appellants
in C.M.A.No.1668 of 2018

For Petitioners
in C.R.P.(PD) No.2293 of 2018 : Mr.A.Sundaravadhanan

For Respondent
in both cases : Mr.S.Mukunth for
M/s.Sarvabhauman
Associates

COMMON ORDER

The above Civil Miscellaneous Appeal is filed against the Fair and Final Order dated 22.06.2018 passed in I.A.No.16 of 2018 in O.S.No.12 of 2018 on the file of II Additional District Court, Erode, thereby ordered status-quo to be maintained by the parties.

2. The above Civil Revision Petition is filed against the Fair and Final Order dated 22.06.2018 passed in I.A.No.73 of 2018 in O.S.No.12 of 2018

on the file of II Additional District Court, Erode, thereby allowing the application seeking appointment of an Advocate Commissioner to note down the physical features and note down the constructions put up by the parties concerned.

3. The petitioners herein are the defendants and the respondent herein is the plaintiff in the said suit. The respondent herein filed the said suit for partition. According to the respondent herein and the petitioners herein purchased the suit properties from the common vendor and all of them were in joint possession for the suit property. Therefore, the respondent herein filed the said suit. According to the petitioners herein are in respect of their share was already partitioned by oral and they are in separate possession and enjoyment of their respective share of the suit property.

4. Pending the said Suit, the respondent herein filed an application seeking interim injunction restraining the petitioners herein to put up any construction in the suit property. The respondent herein also filed an application for seeking appointment of an Advocate Commissioner to note

down the physical features and note down the constructions put up by the petitioners herein in the suit property. Both the applications were allowed by the Court below for the reason that if the Advocate Commissioner pointed out to note down the physical features and note down the constructions put up by either parties, it will be useful to decide the suit.

5. Insofar as the injunction application is concerned, the Court below ordered to maintain status-quo by the parties. In the suit for partition, the Advocate Commissioner can be appointed only to divide the suit property at the time of final decree. The Advocate Commissioner cannot be appointed to note down the physical features and also construction put up by the either parties. It would not serve any purpose to decide the suit for partition.

6. Therefore, the Order dated 22.06.2018 passed in I.A.No.73 of 2018 in O.S.No.12 of 2018 on the file of II Additional District Court, Erode is set aside.

7. Insofar as the interim order of status-quo to be maintained by the parties till the disposal of the suit is confirmed and this Court finds no

infirmity or illegality in the order passed by the Court below. It is made clear that the order of status-quo maintain is subject to the Advocate Commissioner's report and to that extent it is hereby modified. Parties namely the appellants as well as the respondent are directed to maintain status-quo except maintaining their respective buildings if any as on today.

8. Accordingly, the Civil Revision Petition is allowed and the Civil Miscellaneous Appeal is dismissed. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
rna

23.07.2021

To

The 2nd Additional District Judge,
Erode.

G.K.ILANTHIRAIYAN. J,

rna



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