

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.858 of 2014

1.T.K.Venkatesan (died)

2.V.Usha

3.V.Vijayakrishnan

.. Petitioners

[Petitioners 2 and 3 brought on record as LR's of the sole petitioner vide order of this Court dated 02.01.2017 made in C.M.P.No.8727 of 2016 in C.R.P.(NPD).No.858 of 2014]

Vs.

T.K.Srinivasan

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and final order dated 10.10.2013 made in R.E.P.No.18 of 2001 in O.S.No.485 of 1976 on the file of the Sub Court, Sankari.

WEB COPY

For Petitioners : Mr.T.Murugamanickam
Senior Counsel

For Respondent : Mr.S.Raghunathan

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and final order dated 10.10.2013 made in R.E.P.No.18 of 2001 in O.S.No.485 of 1976 on the file of the Sub Court, Sankari.

2.The 1st petitioner is defendant and the respondent is plaintiff in O.S.No.485 of 1976. Pending Civil Revision Petition, the 1st petitioner died and his legal heirs were impleaded as petitioners 2 and 3. The 1st petitioner and respondent had dispute with regard to suit property. Based on the decree passed in the suit in O.S.No.485 of 1976, the respondent filed R.E.P.No.18 of 2001 on the file of the Sub Court, Sankari, for possession. The Advocate Commissioner was appointed. There was a dispute with regard to division of property in Survey No.77/4 alone. The 1st petitioner filed C.R.P.(NPD)No.296 of 2003 before this Court. While the said C.R.P. was pending, the 1st petitioner and respondent compromised their dispute with regard to Survey No.77/4 by accepting Plan 'C' filed in the Court and filed compromise memo agreeing Plan 'C' subject to modification mentioned in clause 2 of the said compromise memo. In clause 2 of the compromise memo, the 1st petitioner

and respondent agreed for shifting the North-South boundary line dividing the portions allotted to them by shifting 7.5 feet to the west side on the portion allotted to the respondent in Plan 'C'. The said compromise memo was recorded and C.R.P.(NPD)No.296 of 2003 was disposed of by the order dated 24.06.2005. After the said order of this Court, the Advocate Commissioner inspected the property, shifted North – South boundary line towards west on the portion allotted to the respondent and filed report. The 1st petitioner filed objection and memo. The Advocate Commissioner filed final report on 07.12.2005. The 1st petitioner again filed objection and also filed R.E.A.No.85 of 2006 under Order XXVI Rule 10(2) read with Section 151 of C.P.C. for permitting him to cross-examine the Advocate Commissioner personally in the open Court.

3.The learned judge by the order dated 27.04.2006 dismissed the said R.E.A.No.85 of 2006 and closed the E.P. on the same day. The 1st petitioner filed two C.R.Ps in C.R.P.(NPD)Nos.3468 & 3469 of 2013 before this Court challenging the order closing E.P.No.18 of 2001 in I.A.No.588 of 1997 in O.S.No.485 of 1976 and E.A.No.85 of 2006 in E.P.No.18 of 2001 in O.S.No.485 of 1976. This Court by the order dated 11.07.2013, without expressing any view on merits, disposed of both the C.R.Ps directing the

Court below to take up the matter for cross-examining the Advocate Commissioner and thereafter, to dispose the R.E.P.No.18 of 2001 on merits and in accordance with law within a period of thirty days from the date of receipt of that order.

4.As per the order of this Court dated 11.07.2013, the E.P. was restored to file. After the said order of this Court, the Advocate Commissioner was cross-examined by the counsel for the petitioners and respondent. The learned Judge by the order dated 10.10.2013 considering the memo of compromise dated 10.11.2004 and order of this Court dated 24.06.2005 made in C.R.P.(NPD)No.296 of 2003 and order of this Court dated 11.07.2013 made in C.R.P.(NPD)Nos.3468 & 3469 of 2013 and considering the evidence of Advocate Commissioner, held that Advocate Commissioner acted as per the terms of memo of compromise and he is not responsible for any shortage of extent, since Plan 'C' and memo of compromise were accepted by both the 1st petitioner and respondent and that now the 1st petitioner cannot go back and claim contrary to the memo of compromise. Having held so, the learned Judge without passing fresh order in the E.P. and directing to hand over the possession of the property as per the report of the Advocate Commissioner, closed the E.P. based on the earlier order as delivery was already recorded.

5.It is the case of the petitioners that they have not taken possession and on the other hand, the respondent has taken possession of the property after North-South boundary line shifted to 7.5 feet on the western side. The learned Judge ought to have directed the Advocate Commissioner to hand over the possession of the property to the petitioners based on the Advocate Commissioner's report and ought to have passed fresh order in the E.P. as this Court by the order dated 11.07.2013 restored the E.P. to file and directed the learned Judge to dispose the R.E.P. on merits.

6.The learned Judge came to the finding that Advocate Commissioner shifted North-South boundary line by 7.5 feet to the western side as per memo of compromise and the Advocate Commissioner acted as per the terms of memo of compromise and earlier order of this Court. From the records and memo of compromise dated 10.11.2004 and order of this Court dated 24.06.2005 made in C.R.P.(NPD)No.296 of 2003, it is seen that there was no issue decided with regard to extent of property in the order passed in the C.R.P. On the other hand, both the parties accepted Plan 'C' and as per the memo of compromise in the modification of shifting 7.5 feet of the North-South boundary line to the western side of the portion of respondent. In view

of the above, the order of the learned Judge is valid and there is no error. At the same time, the learned Judge ought to have re-opened the E.P. and directed the Advocate Commissioner to hand over the possession to the respective parties instead of recording the earlier delivery.

7.For the above reason, the order of the learned Judge closing the E.P. is liable to be set aside and is hereby set aside. The learned Judge is directed to re-issue the warrant of commission to the Advocate Commissioner and direct the Advocate Commissioner to hand over the possession with the help of Bailiff to the respective parties as per the memo of compromise and file his report within four weeks from the date of receipt of a copy of this order. The learned Judge is directed to pass appropriate orders in the E.P. within a period of two weeks thereafter.

8.With the above directions, this Civil Revision Petition is allowed in part. No costs.

WEB COPY

19.08.2021

krk

Index : Yes / No
Internet : Yes / No

To

The Subordinate Judge,
Sankari.



WEB COPY

V.M.VELUMANI, J.
krk



C.R.P.(NPD).No.858 of 2014

WEB COPY

19.08.2021