

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.3297 of 2017

and

C.M.P.No.15402 of 2017

Chinnathai @ Kamalaveni

.. Petitioner

Vs.

1.Kanniammal

2.Panjammal

3.Malliga

4.Nageshwari

5.Vasanthamani

6.Shobana

7.Jothi

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order dated 03.07.2017 made in I.A.No.197 of 2017 in I.A.No.1943 of 2014 in O.S.No.73 of 2014 on the file of the District Munsif Court, Udumalpet.

For Petitioner : Mr.Gopalakrishnan Gopi
for Mr.S.Gunalan

For Respondents : Mr.M.N.Balakrishnan

ORDER

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

This Civil Revision Petition is filed against the fair and final order dated 03.07.2017 made in I.A.No.197 of 2017 in I.A.No.1943 of 2014 in O.S.No.73 of 2014 on the file of the District Munsif Court, Udumalpet.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the entire materials on record.

3.The petitioner who is the plaintiff in O.S.No.73 of 2014, filed the suit for partition against the respondents / defendants, claiming 1/8th share of the suit property. A preliminary decree was passed on 08.10.2014, granting 1/8th share of the suit property to the petitioner. The petitioner filed I.A.No.1943 of 2014 for final decree, for appointment of Advocate Commissioner to divide the suit property into eight equal shares and allot 1/8th share of the suit property to the petitioner and hand over separate possession. In the said application, Advocate Commissioner was appointed and the Advocate

Commissioner inspected and measured the suit property with the help of a Surveyor. The Advocate Commissioner, as suggested by the Surveyor, formed pathway to the well and divided the suit property into two parts as southern portion measuring 40 cents and northern portion measuring 96 cents. The Advocate Commissioner divided both the north and south portion into eight shares consisting of 5 cents and 12 cents each and filed his report. The petitioner filed objection and additional objection to the Advocate Commissioner's report. After filing the objection, the petitioner filed I.A.No.197 of 2017 for appointment of Advocate Commissioner to re-visit the suit property making averments as that of the objection and additional objection to the Commissioner's report. According to the petitioner, the Advocate Commissioner has not stated as to how the parties will take water from well for the portions allotted to them and also if 17 cents which the parties are entitled to is allotted in northern side and southern side, i.e., 5 cents and 12 cents, it will be difficult for them for cultivation. The petitioner sought for appointment of earlier Advocate Commissioner to re-visit the suit property or for appointment of new Advocate Commissioner. The respondents filed counter affidavit and opposed the said application.

4.The learned Judge considered the report of the Advocate Commissioner and found that Advocate Commissioner has stated that by pathway mentioned in the report of the Advocate Commissioner, parties can approach the common well and therefore, the property is divided as northern and southern portion. The learned Judge also held that at the time of inspection by Advocate Commissioner and Surveyor, the petitioner, his advocate and respondents and their advocates were also present. The parties have not given any memo of instruction to the Advocate Commissioner with regard to division of the property. The learned Judge further held that the southern portion is abutting the road and value of the property on the southern portion is more valuable than the other portions. Considering the report of the Advocate Commissioner, the learned Judge held that if 17 cents is given to a party on southern side, the value of the property will be more than the other portions. The Court has power to pass order by which water can be taken from the common well. For the above reason, the learned Judge has dismissed I.A.No.197 of 2017.

5.From the materials available on record, it is seen that no order has been passed on the final decree application based on the Advocate

Commissioner's report, suggesting the way to divide the suit property. The petitioner has filed objections, additional objections and also filed the present I.A. for appointment of the Advocate Commissioner to re-visit the suit property or to appoint another Advocate Commissioner to inspect, measure and suggest the ways to divide the suit property.

6.The learned Judge by giving valid reason, dismissed the I.A. There is no error or irregularity in the order of the learned Judge warranting interference by this Court. The learned Judge is directed to consider the objections, additional objections filed by the petitioner and objections if any, raised by the respondents and pass orders in final decree application allotting one share to the petitioner.

7.With the above direction, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No
Internet : Yes / No

V.M.VELUMANI, J.
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To

The learned District Munisif,
Udumalpet



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