



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Monday, the First day of November Two Thousand Twenty One
PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CMP(MD). No.7246 of 2021

in

A.S.(MD)No.225 of 2021

WEB COPY

J.S.JASMIN STELLA

... Petitioner/Petitioner

Vs

1.J.S.GODWIN

2.The Correspondent,

Angels Matriculation Higher Secondary School
Dhiraviyam Gardens,
Rajapalayam.

... Respondents/Respondents

Petition filed under Order XXVI, Rule 13r/w Section 151 of C.P.C to appoint a commission or an Advocate Commissioner to make the partition as declared in the preliminary decree, passed by this Honourable Court in AS(MD)No.293 of 2009 dated 27.11.2013

Prayer in AS(MD). 225/ 2021 :

This Appeal Suit filed under Order 41 RULE 1 R/w Section 96 of C.P.C to set aside the order passed by the Principal District and Sessions Judge, Virudhunagar at Srivilliputhur in IA No.91 of 2014 in OS No.165 of 2004 dated 12.10.2020.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru. M.Solaisamy, Advocate for the Petitioner, and of Mr.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates for the respondent, this Court made the following order:

This appeal arises out of final decree proceedings. The appellant Jasmine Stella filed O.S.No.165 of 2004 on the file of the Principal District Judge, Srivilliputtur Virudhunagar District seeking the relief of partition. Preliminary decree was passed therein. Aggrieved by the same, the defendants filed A.S.(MD)No.233 of 2009 before this Court. The plaintiff filed her cross objection. Vide judgment and decree dated 27.11.2013, A.S.(MD)No.233 of 2009 was dismissed, while Cross Objection (MD)No. 1 of 2010 was allowed. Thereafter, the plaintiff filed I.A.No.91 of 2014 for passing final decree. An advocate commissioner was appointed and final decree came to be passed by the trial court on 12.10.2020. Challenging the same, this first appeal came to be filed.

2.I heard Shri.Govindarajan, learned counsel for the appellant and Shri.Ajmal Khan, learned senior counsel appearing for the respondents.



3.I indicated that I find considerable merit in the contention of the appellant's counsel's contention that the advocate commissioner ought not to have taken the valuation report submitted by the defendants. The advocate commissioner ought to have undertaken an independent exercise. In this case, the valuer was also examined as C.W.2. He stated that the value of the property facing Sankarankovil Road will be more. His report is not in consonance with his testimony. I found quite a few such errors in the impugned judgment and decree. I indicated that I am inclined to set aside the same and remand the matter to the file of the trial Court for undertaking a fresh exercise.

4. There upon, the learned counsel for the respondents submitted that since the first appeal is a continuation of the original proceedings, this Court can itself appoint an advocate commissioner and pass a fresh final decree herein itself. It is also seen that the appellant has filed C.M.P.(MD)No.7246 of 2021 for appointing an advocate commissioner. Thiru.J.S.Godwin first respondent herein / D1 is also present in person before this Court. He also stated that he has no objection for appointing an advocate commissioner. His endeavor is that the proceedings should be concluded as expeditiously as possible. Since the contestant himself has no objection, C.M.P.(MD)No.7246 of 2021 is allowed.

5. By consent of both parties, Thiru.M.Thirunavukkarasu, Advocate who is practicing before this Court is appointed as an advocate commissioner. This Court requests his brother Bhojarajan to extend his assistance to enable the advocate commissioner to discharge his duties to the satisfaction of this Court. The remuneration of the advocate commissioner is fixed at Rs.50,000/-. It shall be borne equally by the parties. The Executive Engineer, PWD, Rajapalayam is directed to extend his fullest co-operation and assistance by deputing his subordinate to enable the advocate commissioner to complete the task. He shall also make available all the relevant particulars including valuation. The Tahsildar, Rajapalayam is also directed to depute the surveyor to extend his assistance to the advocate commissioner. Shri.M.Thirunavukkarasu shall do all that is required of an advocate commissioner in a partition suit of this nature and submit his report within 12 weeks.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

- 1.The Principal District and Sessions Judge,
Virdhunagar at Srivilliputhur.
- 2.The Executive Engineer, PWD, Rajapayalam
- 3.The Tahsildar Rajapalayam
- 4.Mr.M.THIRUNAVUKKARASU, Advocate
Lawyers Chambers,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer
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Madurai Bench of Madras High Court, Madurai

+ 1 CC to M/s.Ajmal Associates SR.No.7776

KM(CO)

RS/SKN (16.11.2021) 3P 7C