



C.R.P. No.3191 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(NPD)No.3191 of 2019
and CMP.No.20779 of 2019
and CMP.No.13546 of 2022

1. Sathyananthan
2. Santhakumar

...Petitioners

Vs.

1. Sangeetha Priya
2. Sudeshkumar
3. Srinivasan
4. Jayashree
5. Siva
6. Sathish

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the Fair and Decreetal order dated 30.04.2019 made in I.A.No.12784 of 2015 in O.S.No.10477 of 2010, on the file of the IV-Additional City Civil Court at Chennai, and allow the above Civil Revision Petition.



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C.R.P. No.3191 of 2019

For Petitioners : Mr.Ravichandran Sundaresan
For R1 and R2 : Mr.Duraikannan
For R3 : Door Locked
For R4 to R6 : No such person

ORDER

This Civil Revision Petition has been filed by the petitioners challenging the impugned order passed by the IV-Additional City Civil Court, Chennai dated 30.04.2019 in I.A.No.12784 of 2015 in O.S.No.10477 of 2010.

2. The original suit in O.S.No.10477 of 2010 was filed by the plaintiff/Sangeetha Priya for the relief of partition and separate possession of 1/4 share from A & B Schedule property and for declaration. The suit properties originally belongs to one Manikam and Ambika who are having 3 sons and 2 daughters. The plaintiff's' mother viz., Arunthathi is one of the daughters of said Manikam and Ambika. The legal heirs viz., the plaintiffs filed a suit for partition, claiming 1/4 share in the suit properties against the sister, brothers and their mother. The said suit was contested by both parties



C.R.P. No.3191 of 2019

and preliminary decree was passed and granted 1/5 share in A and B schedule properties in favour of plaintiffs and with regard to other relief suit was dismissed. Thereafter, no appeal was preferred. Thereafter, the plaintiffs filed in I.A.No.12784 of 2015 for division of the suit properties pursuant to the preliminary decree dated 20.03.2015 by appointing Advocate Commissioner to divide the A & B schedule properties into 5 equal shares and by metes and bounds and allot one share to the plaintiffs. Accordingly, an Advocate Commissioner has been appointed by the trial Court and warrant has been issued to measure and to divide the A & B schedule properties into 5 equal shares. The Advocate Commissioner has also submitted a report in detailed manner, wherein he has clearly stated that both the A & B schedule properties are indivisible area since the A schedule property is partly constructed building and partly vacant land area and with regard to B schedule property there is no possibility for division since because there was 3 separate houses in the properties. Therefore, the trial Court ordered for public auction of properties by fixing the price as per the guide -line value of that area and after the sale, the sale consideration of the A and B schedule properties has to be divided into 5 equal shares.



C.R.P. No.3191 of 2019

According to the rules and hand over the same to the parties as per the preliminary decree. Challenging the said finding, the defendants 5 and 6 have preferred this petition.

3. The learned counsel for the revision petitioners/defendants 5 and 6 have submitted that they are residing in B scheduled properties and they are constructed their respective portion and living in B schedule properties. Therefore, the trial Court ought to have allotted B schedule properties to the revision petitioners but the trial Court Judge without appreciating those aspects erroneously concluded that the properties are indivisible. Hence, the defendants 5 and 6 have preferred the present petition to set aside the finding of the trial Court.

4. The learned counsel for the plaintiffs/respondents 1 and 2 submitted that B schedule properties are in enjoyment of the three sons of said Manikam and the plaintiffs/respondents 1 and 2 have not enjoyed the properties all these years. Besides the properties are indivisible as per the Advocate Commissioner's report and hence, the trial Court rightly ordered



C.R.P. No.3191 of 2019

to public auction of the properties which needs no interference. Hence, he prays to dismiss the revision petition.

5. On considering the rival submissions, it reveals that the petition was filed in the year 2010 and the plaintiffs claimed 1/4 share in the suit properties. Admittedly, 'A' schedule property situated at Ashok Nagar, Chennai and 'B' scheduled property situated at Thousand Lights, Chennai. It is seen that there are 3 houses in B schedule property which are under the occupation of the petitioners and the third respondent herein. As per the Advocate Commissioner's report, the trial Judge held that the properties were indivisible because they are constructed the house. But, the learned counsel for the revision petitioners submitted that already the defendants 1, 5 and 6 who are the sons of said Manikam, occupied 3 portions and the same can be allotted to them.

6. The learned counsel for the plaintiffs/respondents 1 and 2 have submitted that B scheduled property is more value than the A scheduled property. Hence, the plaintiffs has raised the objection for the petitioners



C.R.P. No.3191 of 2019

claim.

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7. Since the revision petitioners put up construction in 'B' schedule property, they ready to pay the amount to the plaintiffs equal to their share as fixed by the Advocate Commissioner in final decree proceedings as per manner known to law and 'A' schedule property may allot to them under equity.

8. On considering the facts that the plaintiffs want to divide the properties by selling the same in auction which is under occupation by the revision petitioners.

9. Therefore, the matter is remanded back to the trial Court and the trial Court is directed to dispose the case as per manner known to law by giving opportunity to the parties who want to purchases the properties may consider under equity. The trial Court is directed to dispose the case within a period of six months from the date of receipt of a copy of this order.



C.R.P. No.3191 of 2019

10. Accordingly, this Civil Revision Petition is disposed of.

Consequently, connected miscellaneous petitions are closed.

28.11.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
msrm

To

The IV-Additional City Civil Court at Chennai.



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C.R.P. No.3191 of 2019

T.V.THAMILSELVI, J.

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