



C.R.P. (NPD) No. 2232 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 2232 of 2017

And

C.M.P.No. 10607 of 2017

S.Shanmugam

... Petitioner/Respondent/Plaintiff/Petitioner

-Vs-

K.Rajasekaran

...Respondent/Petitioner/Defendant/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the Principal District Munsif Court at Tiruchengode, dated 18.02.2015 in I.A.No. 710 of 2013 in O.S.No. 35 of 1996.

For Petitioner : Mr. P.Valliappan

For Respondent : Mr. Mukund
for M/s. Sarvabhauman Associates



ORDER

WEB COPY

The Revision Petition has been filed by the plaintiff in O.S.No. 35 of 1996 questioning the order in I.A.No. 21 of 2015, dated 18.02.2015 passed by the Principal District Munsif, Tiruchengode, dismissing the said application filed by the revision petitioner/plaintiff herein. That particular Interlocutory Application, namely, I.A.No. 21 of 2015 had been filed in I.A.No. 710 of 2013. The said Interlocutory Application in I.A.No. 710 of 2013 had been filed by the respondent/defendant in the suit under Order 26 Rule 13 of the Code of Civil Procedure, requesting the Court to appoint a Commissioner to assist the Court to pass Final Decree in the suit.

2. The suit is of the year 1996. The travellogue of the suit has been given in the affidavit filed by the respondent herein in I.A.No. 710 of 2013.

3. It is seen that actually there were two suits and this particular suit from which the present revision arose was a suit for partition and separate possession. A decree was passed. Thereafter the parties joined



issues on the decree by filing a First Appeal, by filing Second Appeal and also by taking the warpath to the doors of the Hon'ble Supreme Court.

Finally the decree was confirmed. This would indicate that the petitioner herein as plaintiff should have been extremely satisfied that the legal proceedings which he had instituted culminated by confirming the preliminary decree granted in his favour by the trial Court.

4. It is to be expected that he would also file an application for final decree. He actually did file such an application in I.A.No. 71 of 1996, but for reasons best known, I am informed that it was permitted to be dismissed for default on 25.02.2013.

5. In a suit for partition and separate possession, both the plaintiff and the defendant stand to gain and stand to lose. The defendant is also at liberty to seek execution of the share allotted under the preliminary decree. Therefore, the respondent herein, in his capacity as defendant filed I.A.No. 710 of 2013 under Order 21 Rule 13 CPC. A Commissioner was appointed and warrant was also issued.



6. The lay of the land and the schedule had been given in preliminary decree and as a matter of fact, it must be emphasised that the schedule in the decree was in accordance with the schedule to the plaint which schedule have been given by the revision petitioner herein as plaintiff in the suit. That schedule and that lay of the land still remains.

7. It was that particular property which the Commissioner had the task of identifying, measuring and proposing a possible division between the two parties.

8. He set about this task and in the report, he had stated that he identified the property in the presence of the learned counsels for both the sides and also in the presence of the Village Administrative Officer and the Surveyor. Thereafter he had measured the property. He had also divided in the property east to west and separately by north to south. He had given all possible combinations by which in the land could be divided into two parts.



9. The actual decision on the report is to be taken only by the Principal District Munsif, Tiruchengode. The Commissioner only puts up a suggestion or a proposal for such division. The District Munsif, who takes that on record, in this case, the Principal District Munsif, Tiruchengode, always retains the power to be accept or to modify or to vary the report and also to call for an additional report by appointing another Commissioner.

10. To this extent, let me extract Order 26 Rule 13 and more particularly, Order 26 Rule 14 (1)(2)(3) Civil Procedure Code.

Order 26 Rule 13 Civil Procedure Code:

“13. Commission to make partition of immovable property.- Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.”



Order 26 Rule 14 (1)(2)(3) Civil Procedure Code:

“14. Procedure of Commissioner.—

(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.



(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.”

11. The aforesaid provisions relates firstly to the report of the Commissioner, as to how he should execute the warrant. It is also stated that the Court should first grant an opportunity to both the parties to file their objections. The provisions also relate secondly to how the Court should consider such objections.

12. The Court should apply its mind and either affirm the report or vary the report or in extreme circumstances even set aside the report. This power is inherent in the Court when the Commissioner present a report under Order 14 Rule 3 CPC.



13. The subsequent course of action to be taken by the Court in accordance with the decision taken by it vis-a-vis the report are also given.

14. That provisions are comprehensive in nature. It does not contemplate one of the parties to examine seek that the report should be scrapped and a new Commissioner should be appointed. Let me give that privilege to the Principal District Munsif, Tiruchengode, to examine the report filed by the Commissioner and thereafter hear objections and then take a decision on that particular report.

15. The petitioner herein as plaintiff should also assist in ensuring that the litigation comes to an end at some point of time or the other. This cannot be protracted for a long time. He had instituted the suit. It is hoped that he would also end of the suit within a very short period of time.

16. Both Mr.P.Valliappan and Mr. Mukund, took me through the nature of the objections and also the report of the Commissioner and more particularly laid stress on objections raised. All these have been dealt with by the learned Principal District Munsif, Tiruchengode, in the order.



WEB COPY

17. I have my own apprehension in passing any observation on the objections raised since any observation whether the objections would play upon the mind of the learned Principal District Munsif, Tiruchengode, whose privilege it is to examine the report of the Advocate Commissioner.

18. It is for these reasons that even though both the learned counsels took me through the details of the report with one assailing the report of the Advocate commissioner and the other even if not supporting, pointing out that there are no mistakes on the face of the report of the Advocate Commissioner.

19. Let me hand over the baton and the privilege to analyse the report and the objections to the learned Principal District Munsif, Tiruchengode, and also grant further privilege of assailing or supporting the report to the Counsels, who actually would be addressing the learned Principal District Munsif, Tiruchengode. However, one aspect is clear, namely that the advocate commissioner did put efforts in formulating the



report. Sketches have been produced. The land was identified by the Village Administrative Officer. The measurements were taken by the Surveyor. There cannot be a better official than the Village Administrative Officer, to identify any land in a village and there cannot be better person than the surveyor to actually measure a land.

20. In view of the above reasons, though it crosses in my mind that whether to enter into a discussion on the nature of the land which had been pointed out by Mr. P.Valliappan by stating that there are rocky lands and that boundaries have not been properly fixed and that the lands are not suitable for agriculture and therefore, expressed an apprehension that the division may not be to the advantage of both the parties, still I am confident that the Principal District Munsif, Tiruchengode, would also devote his attention to all these aspects and come up with an amicable or just division of the lands. The revenue records also had been examined. It is also been pointed by Mr.P.Valliappan, that there is a thar road which is not suitable for agricultural activities.



21. All these factors must be addressed during the course of passing the final decree. The learned Principal District Munsif, Tiruchengode, should pass the final decree adducing all these aspects.

22. If either the revision petitioner or the respondent, are of the opinion that they should be permitted to raise further aspects relating to the report of the Advocate Commissioner, both may be given one more opportunity to file any affidavit either objecting or affirming the division proposed by the Advocate Commissioner. Therefore, let the Principal District Munsif apply his/her mind and pass Final Decree. This Court should not interfere on that particular aspect particularly since the parties have finally reached, hopefully, the concluding portion of a long winding litigation.

23. Granting this particular liberty to the revision petitioner and also the respondent/defendant, to file further affidavit, let the Principal District Munsif, Tiruchengode, is directed to pass necessary final orders in the Final Decree application, namely, I.A.No. 710 of 2013.



WEB COPY



C.R.P. (NPD) No. 2232 of 2017

C.V.KARTHIKEYAN, J.

vsg

24. With the above said observations, this Civil Revision Petition is disposed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.02.2022

Index: Yes / No
Speaking / Non-Speaking order
vsg

To

1. Principal District Munsif Court,
Tiruchengode.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

**C.R.P. (NPD) No. 2232 of 2017
And
C.M.P.No. 10607 of 2017**