



C.R.P (NPD) No.415 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P (NPD) No.415 of 2017

K.Sekar

...Petitioner

..Vs..

1.S.Manonmani
2.Tmt.S.Ramani
3.S.Barath
4.S.Deepalakshmi
5.S.Santhi

D.Pushpa (Died)

6.D.Chandra
7.M.Durai
8.D.Kumar
9.Sumithra
10.D.Ganesh
11.D.Karthik

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of The Constitution of India, against the fair and decreetal order dated 16.08.2016 and made in I.A.No.15953 of 2015 in I.A.No.7927 of 2013 in O.S.No.13484 of 2009 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Thiagarajan

For R1 : Mr.R.Dhamodaran

For R2-R11 : No appearance



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ORDER

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This revision has been filed by the petitioner in I.A.No.15953 of 2015 of I.A.No.7927 of 2013 in O.S.No.13484 of 2009 which suit is now pending on the file of the VII Assistant City Civil Court at Chennai.

2. It is seen that the suit has been filed for partition. A preliminary decree had been passed stating that the plaintiff is entitled to undivided 1/6th share in the suit properties. Thereafter, I.A.No.7927 of 2013 had been filed seeking final decree and for appointment of Advocate Commissioner. It had been stated that the Advocate Commissioner had also visited the suit property and the revision petitioner herein was also present and a report was also filed by the Advocate Commissioner. Thereafter, in the year 2015, the present petitioner filed I.A.No.15953 of 2021 seeking to examine the Advocate Commissioner. That application had been dismissed.

3. Heard Mr.R.Thiyagarajan, learned counsel for the petitioner/first defendant in the suit and Mr.R.Dhamodran, learned counsel for the first respondent/plaintiff in the suit.

4. Mr.R.Thiyagarajan, the learned counsel stated that it would only be appropriate to cross examine the Advocate Commissioner on the report which he had filed.



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5. Mr.R.Dhamodharan, learned counsel for the first respondent/plaintiff on the other hand expressed grievance over the inordinate delay in which the matter has been dragged before the trial Court. It was stated that the petitioner herein had filed objections to the Commissioner's report with a delay of 321 days. It had been complained that the suit itself is still pending owing to the filing of this application to examine the Advocate Commissioner and also the pendency of the present revision petition which is still at the stage of the admission for the past 4 years.

6. On perusal of the order under question in the revision petition it is seen that the learned Trial Judge had been quite clear about the facts of the case and more specifically had stated that the Advocate Commissioner has been appointed to inspect and divide the suit property by metes and bounds in 6 equal shares. It had been further stated that the Advocate Commissioner had inspected the suit and had filed a report and also a sketch prepared by a Surveyor giving the measurements of the suit property and also regarding the method to divide the property in 6 equal parts. It had been stated that the limited work allotted to the Advocate Commissioner had been done and nothing further now remains sofar as the Advocate Commissioner is concerned. It had been further



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stated that thereafter it is for the Court to examine as to which portion is to be allotted to each one of the parties and the Court had taken up that particular burden but could not discharge the same in view of the application being filed.

7. All facts can be advanced during the course of the final decree application. I am not able to accept the contents of the petitioner. It is now for the Court to consider the report of the Advocate Commissioner and allot the various shares to each one of the parties.

8. The Advocate Commissioner has also given a sketch prepared by a Surveyor and it is for the Court now to allot one particular share to each one of the 6 shares. The present application has been filed only to protract the proceeding. The matter has already been delayed for 4 years. I am not prepared to keep it pending any longer. This Revision Petition is dismissed.

9. A direction is given to the 7th Assistant City Civil Court Chennai to take on file I.A.No.7927 of 2013 and pass final decree in O.S.No.1348 of 2009 and proceed without granting any adjournments without reasons and dispose of the said application for final decree on or before 31.03.2022. No further time shall be granted to the parties and a



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direction is given particularly to all parties in the suit to co-operate to dispose of the suit.

10. The observations made by me in the course of the present order is only for the limited purpose of the revision petition and the learned Trial Judge may proceed further.

11. In the result, this Civil Revision Petition is dismissed.

10.02.2022

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Speaking (or) Non Speaking Order
Internet : Yes



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