

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1693 of 2022

Senthamarai

: Petitioner

Vs.

1.Vijayalakshmi

2.Pandidurai

3.Annadurai

4.Ingar

: Respondents

PRAYER: Civil Revision Petition filed Section 115 of the Code of Civil Procedure to call for the records pertaining to the fair and decreetal order dated 07.06.2022 passed by the learned Additional District and Sessions Judge, Palani, in I.A.No.46 of 2021 in O.S.No.25 of 2015 and set aside the same.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondents : Mr.K.Periasamy

ORDER

This revision petition is filed as against the order passed by the learned Additional District and Sessions Judge, Palani, in I.A.No.46 of 2021 in O.S.No.25 of 2015, dated 07.06.2022.

2.The petitioner is the plaintiff in the suit in O.S.No.25 of 2015. He filed the suit for partition and the same was decreed by the learned Additional District and Sessions Judge, Palani, by order dated 11.01.2021. The petitioner has also filed an application for passing of final decree and the same was pending before the trial Court. In the meantime, the respondents / defendants filed an appeal before this Court in A.S.(MD)No.76 of 2021, wherein, a Division Bench of this Court has passed an order of interim stay for passing of final decree. While so, the petitioner / plaintiff has filed an interlocutory application in I.A.No.46 of 2021 before the trial Court for appointing an Advocate Commissioner to survey the property and to suggest the mode of partition among the parties. The trial Court dismissed the said application, holding that the appeal in A.S.(MD)No.76 of 2021 is pending and in view of the interim order of stay granted therein, appointing an Advocate Commissioner amounts to wastage of time and money. Aggrieved over the same, the petitioner has moved the instant revision.

3.Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

4.Learned Counsel for the petitioner, by relying upon the decision of the Hon'ble Supreme Court in the case of ***Kattukandi Edathil Krishnan and Others v. Kattukandi Edathil Valsan and Others***, reported in ***AIR 2022 SC 2841***, submitted that once a preliminary decree has been passed, the Court has to pass the final decree on its own without waiting for the decree holder to initiate a separate proceedings for that purpose. He further submitted that in this case, preliminary decree was passed in his favour, which was challenged in the appeal before this Court. While entertaining the appeal, the Division Bench of this Court has passed an interim order staying the passing of final decree alone. All other proceedings can very well be carried out, except the passing of final decree. Therefore, he has filed the interlocutory application for appointment of Advocate Commissioner to survey the property and to suggest the mode of partition among the parties. If the said process is completed, the report of the Advocate Commissioner would be very much useful at the time of passing the final decree. However, the trial Court has erroneously dismissed the interlocutory application in view of the interim order passed by the Division Bench of this Court.

5.As per the latest decision of the Hon'ble Supreme Court in ***Kattukandi Edathil Krishnan's*** case (supra), the trial Court, soon after the passing of the

preliminary decree for partition and separate possession of the property, has to take steps under Order XX Rule 18 CPC *suo motu*, without requiring the initiation of any separate proceedings. In this case, the petitioner, after the passage of preliminary decree, has himself filed an interlocutory application for final decree and for appointing an Advocate Commissioner for the purpose of survey and for suggesting the mode of partition, which would assist the trial Court at the time of passing the final decree. The interim order of stay passed by the Division Bench of this Court in A.S.(MD)No.76 of 2021 is with regard to the passing of final decree alone. Therefore, there is no impediment in appointing an Advocate Commissioner, as his report only assist the trial Court at the time of passing the final decree, which, of course, would be passed based on the outcome of A.S. (MD)No.76 of 2021.

6.Under such circumstances, the order passed by the trial Court in I.A.No.46 of 2021 in O.S.No.25 of 2015, dated 07.06.2022, is hereby set aside. The trial Court shall appoint an Advocate Commissioner and issue necessary warrants. Based on the outcome of A.S.(MD)No.76 of 2021, the trial Court shall pass appropriate orders in the final decree application and at that time, the report of the Advocate Commissioner shall be utilized.

With the above observations and directions, this civil revision petition stands disposed of. No costs.

Index : Yes / No
Internet : Yes
gk

24.08.2022

To

The Additional District and Sessions Judge,
Palani.

B.PUGALENDHI, J.

gk

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