



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P (MD)No.2675 of 2015

Justin Xavier

...Revision Petitioner/3rd Respondent/
3rd Defendant

vs.

1)Selvert

...1st Respondent/Petitioner/Plaintiff

Ambrose Nadar(Died)

2)Devasagayam

...2nd Respondent/2nd Respondent/
2nd Defendant

Prayer: This Petition filed under Article 227 of the Constitution of India, against the Memo C.F.No.6721 of 2015 in O.S.No.185 of 2003 on the file of Principal District Munsif Court, Kuzhithurai, dated 01.10.2015.

For Petitioner : Mr.V.M.Balamohan Thambi
For Respondents : Ms.J.Anandhavalli

ORDER

The 1st respondent herein as plaintiff filed a suit for partition in O.S.No.185 of 2003 on the file of the Principal District Munsif, Kuzhithurai, in which, a preliminary decree was passed on 12.11.2010. Subsequently, based on the preliminary decree, an application for final decree was filed and during the pendency of the final decree application, a commissioner has been appointed and he inspected the suit property and filed a memo along with the rough sketch, in which, the trial Court passed an order and challenging the said order, now the 3rd defendant in the suit has filed the present revision before this Court.

2. The 1st respondent/plaintiff has already got the pathway in the western side i.e., C and D as per the rough sketch and he can very much use that pathway to reach his property in the southern side, which is proposed to be allotted to him. Therefore, the Commissioner has suggested that through the western side of the building shown as '1' in the rough sketch, no separate pathway need to be allotted, since the the 1st respondent/plaintiff has got already access from the northern main road to reach the property A, B, C, F.



3. The learned counsel for the respondents would submit that space is available only from the eastern side of the building shown as '1' and it is wrongly mentioned in the rough sketch and the trial court's order as western side. There is no measurement made to that and therefore, the Court can give a direction to the Commissioner and the trial Court to measure the gap between the building shown as '1' and the compound wall E and F in the rough sketch.

4. Heard both sides and perused the records.

5. Admittedly, the petitioner and the respondents are parties to the suit in O.S.No.185 of 2003, in which, a preliminary decree was passed and there is no dispute with reference to the passing of the preliminary decree. While filing the application for passing of final decree, a Commissioner has been appointed, who after inspecting the property, filed a memo along with the rough sketch in page 26 of the typedset of papers, in which, it is stated that the total suit property shown as A, B, D, E, in which, A, B, C, F was proposed to be allotted to the 1st respondent/plaintiff. The building shown as '1' in the rough sketch is proposed to be allotted to the petitioner herein/3rd defendant and also in that portion, a pathway has been proposed to be allotted to the 1st respondent/plaintiff. But, however, the learned counsel for the respondents would submit that instead of eastern side, the trial Court has mistakenly stated as western side, for allotting pathway to the plaintiff, but unless the entire measurement and measurement of gap between the compound wall E and F and the building shown as Plot '1' in the rough sketch, are placed before this Court, this Court cannot come to the conclusion that there is a mistake in the order of the trial Court. But, however, the petitioner and the respondents are at liberty to approach the trial Court and the trial Court may give suitable instructions to the Commissioner to once again inspect the entire property and give a final report with plan and after filing the commissioner report with plan, the trial Court is directed to allot a suitable way to reach the portion which would be allotted to the 1st respondent/plaintiff.

6. With the above direction, the Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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To

The Principal District Munsif,
Kuzhithurai.

+1 CC to M/s.V.M.BALAMOHAN THAMBI, Advocate (SR-1574[F] dated
12/01/2022)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-1040[F] dated
10/01/2022)

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