



C.R.P. (PD) .No.2064 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.(PD).No.2064 of 2020

and

C.M.P.No.12973 of 2020

R.S.Mahalingam

.. Petitioner

Vs.

1.R.Vasanthi

2.R.Siddeshwaran

3.R.Jagadeesan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 26.02.2020 passed in Un-numbered I.A. In O.S.No.61 of 2013 on the file of the Subordinate Court, Rasipuram.

For Petitioner : Mr.P.Mathivanan

For Respondents : Mr.V.T.Balaji

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ORDER

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The learned Counsel for the Revision Petitioner would submit that the Revision Petition has been filed challenging the order rejecting the un-numbered IA in O.S.No.61 of 2013.

2. O.S.No.61 of 2013 on the file of the learned Sub-Judge, Rasipuram was filed seeking partition. Subsequently, a petition to record the compromise was filed. The Petition was returned by the learned Sub-Judge Rasispuram with certain queries regarding supporting documents. Repeatedly the petition was complied without answering the queries of the learned Sub-Judge. Therefore, the learned Judge has rejected the petition in un-numbered IA in O.S.No.61 of 2013. Aggrieved by the same, the Plaintiff had approached this Court under Article 227 of the Constitution of India to set aside the order of the learned Sub-Judge, Rasipuram rejecting the un-numbered IA in OS.No.61 of 2013 dated 26.02.2020.

3. The learned Counsel for the Revision Petitioner invited the

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attention of this Court to the order passed by the learned Sub-Judge,

Rasipuram in which it is stated as follows:-

“When the petitioner on 1.6.2013 demanded the defendants, to divide the property and to allot his share, the same was denied. Therefore, he filed a petition under Order 23 Rule 3 of CPC stating that they had compromised the dispute and prays to decree the suit as per the compromise arrived. This court had already returned the said application as to file the documents to identify the property for which the decree was passed in the previous suit, and without such document the compromise cannot be recorded. Subsequently on 24.7.2015 after hearing both the counsels, once again this court returned the petition stating that without the documents to show the location except the FMB copy for S.No.172 and the rough plan, the compromise memo cannot be recorded and once again it was returned. After that the petitioner had given an explanations that the FMB of S.No.172 is filed and it includes the suit property. Once again the petition was returned for the reason that the FMB sketch is not sufficient to identify the property and with a direction to file the proper documents to identify the same in order to record the compromise memo. But instead of producing any other



documents, the petitioner is repeatedly representing the petition with the same endorsement. On perusal of records, the decree of the learned Subordinate Judge in O.S.497/1995 is filed along with the plaint which reveals that the suit was decreed exparte. The plaintiff would have filed necessary documents to prove the possession and the identification of the suit property to record the compromise held between them. The rough sketch filed along with the petition is not sufficient to identify the property. At the time of arguments, the learned senior counsel had stated except the FMB sketch and rough sketch, the parties are having no documents to prove the location and the possession of the properties. Therefore, since the petition order 23 rule 3 was already returned for want of necessary documents, this court in a firm view that the petition cannot be taken on file and hence this petition by the parties are rejected. ”

4. To the query raised by this Court regarding the well reasoned order of the learned Sub-Judge to the learned counsel appearing for the Revision Petitioner/ Plaintiff before the Trial Court, the learned Counsel for the Revision Petitioner submitted that there was a previous exparte decree obtained by the Petitioner in his favour and that was furnished. The learned



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Sub-Judge, Rasipuram was not satisfied with the same. He has raised queries.

5. This Court exercising discretion under Article 227 of the the Constitution of India cannot direct the District Judiciary, particularly the Civil Court to grant the relief as sought for by the parties. The Judge presiding over Civil Court is empowered to raise queries based on their judicial training and also based on their experience in the course of trial of the case.

6. It is to be pointed out that in very many instances in the past, there had been exparte decree passed without any documents throughout the State of Tamil Nadu by various Courts. Which was brought to the notice of the High Court and based on which a circular was issued by the High Court stating that the Judicial Officers in the Civil Court throughout the State not to grant exparte decree blindly. The grounds of the Civil Revision Petition reflect contrary to that circular. In the light of the said circular, this Court is not inclined to interfere with the well reasoned order of the learned Sub-

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Judge, Rasipuram.

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7. This Civil Revision Petition has no merits and it is accordingly **dismissed**. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Speaking order/ Non-Speaking order

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To

The Subordinate Judge, Rasipuram.

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SATHI KUMAR SUKUMARA KURUP, J.

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