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C.R.P.No.1105 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

Civil Revision Petition.No.1105 of 2014
and
M.P.No.1 of 2014

1.Kannammal

2.Poovathal

... Petitioners

Vs.

1.Deivathal(died)

2.Kumarasamy

3.Samianthan

4.Nallammal

Arunachalam (died)

5.Palanisamy

6.Samiyathal

7.Suntharam

...Respondents

R-1 Died RR2 and 3 Legal heirs of the deceased R-1 viz Deivathal as per the Memo dated 08.04.2022 and vide Court order dated 20.04.2022 made in C.R.P.No.1105 of 2014 JNBJ.



C.R.P.No.1105 of 2014

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the judgment and decreed dated 08.10.2013 passed in I.A.No.300 of 2013 in I.A.No.519 of 2011 in O.S.No.306 of 2006 on the file of the II Additional District Munsiff Court, Erode.

For Petitioner : Mr.V.Raghunathan
for M/s.S.Dhanasekaran

ORDER

The plaintiffs are the petitioners. They laid a suit in O.S.No.306 of 2006 on the file of the II Additional District Munsiff Court, Erode, for the purpose of partition. They were successful in obtaining a decree on 27.01.2010. Thereafter, they filed an application under Order 26 Rules 13 and 14 of C.P.C., seeking for appointment of an Advocate Commissioner to divide the properties. The said application was allowed by the learned II Additional District Munsiff, Erode, on 28.04.2012. An Advocate Commissioner was appointed. He also submitted a report together with a plan on 19.03.2013. Thereafter, an application was filed in I.A.No.300 of 2013. The petition sought for setting aside the Advocate Commissioner's report and for appointing a fresh Advocate Commissioner.



2. The learned judge after receiving a counter, set aside the Advocate Commissioner's report but has refused to appoint a new Advocate Commissioner.

3. In a suit for partition, an Advocate Commissioner merely suggests the mode of division. If the mode of division suggested is not acceptable to the Court, it could always modify the Advocate Commissioner's report and pass a final decree. The Advocate Commissioner's report is not written stone own for the Court not being able to modify the same. As already pointed out, an Advocate Commissioner's report is a mere suggestion to the Court and it is the essential function of the Court to pass the final decree.

4. The learned Judge has treated the Advocate Commissioner's report, as if one, filed in a suit for declaration of title whereunder, if the report is unsatisfied, it is set aside and a warrant is re-issued. Further, twisting the knife in the wound, the learned Judge has refused to appoint another Advocate Commissioner in order to submit a fresh report. Such a procedure is totally un-called for. By adopting the said procedure, the Court has nullified the preliminary decree granted in O.S.No.306 of 2006 as well as its order appointing an Advocate Commissioner in I.A.No.519 of 2011. The



Hon'ble Supreme Court in ***Kattukandi Edathik Krishnan and ors. v.***

Kattukandi Edathil Valsan and ors reported in 2022 5MLJ 246 has held as

follows:

“33. We are of the view that once a preliminary decree is passed by the Trial Court, the Court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the Code of Civil Procedure. The Courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the Court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the Code of Civil Procedure soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.”

5. In the light of the above discussions, the following orders are passed.

i) The learned II Additional District Munsiff Court, Erode, shall



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appoint an Advocate Commissioner to visit the suit property and submit a report regarding the mode of division. This would be only a suggestion to the Court and it is not final.

ii) The Court shall receive objections, if any, from the parties and apply its mind to the same, decide whether it is accepting the suggestion of the Advocate Commissioner regarding mode of division or whether it is substituting its own mode of division.

iii) The said exercise shall be completed within a period of six months from the date of receipt of copy of this order.

iv) The Court should not unnecessarily grant adjournments in this case, as the parties have been waiting for seventeen long years knocking on the doors of the Court to partition a property in which they succeeded in getting a decree in the year 2010. The petitioners shall bear the costs of the Advocate Commissioner being appointed afresh.

6. With the above directions, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2023

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Index:Yes/No



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Speaking Order: Yes/No

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V. LAKSHMINARAYANAN

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To

The II Additional District Munsiff Court,
Erode.

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