



C.R.P.No.3641 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

C.R.P.No. 3641 of 2023
and
C.M.P. No. 22794 of 2023

Vallinayagam

.. Petitioner

Vs

1.T. Pushparaj
2.Sumathi
3.Puratchi
4.Bhuvaneshwari @ Russiya
5.V. Murugan

6.The Chairman
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chepauk, Chennai – 600 005.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned order dated 18.04.2023 passed in I.A.No.1 of 2019 in O.S.No.6953 of 2013 by the XIII Asst. Judge, City Civil Court, Chennai.



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For Petitioner : Mr. S. Rathnasabapathy

For Respondents : Mr. L. Prabakar, for R1 to R5

ORDER

This Civil Revision Petition is filed challenging the impugned order passed in I.A.No.1 of 2019 in O.S.No.6953 of 2013 on the file of XIII Asst. Judge City Civil Court, Chennai, the first defendant has preferred this revision.

2. Before the trial Court, the plaintiffs / respondents herein filed a suit in O.S.No.6953 of 2013, for partition against the first defendant / revision petitioner. The preliminary decree of 1/3rd share was allotted to the first plaintiff / first respondent herein and for plaintiffs 2 to 5 / respondents 2 to 5 herein who are the legal heirs of one Tulukanam was allotted 1/3rd share totally and another 1/3rd share was allotted to the first defendant / petitioner herein. To implement the final decree, the plaintiffs' filed an application to appoint an Advocate Commissioner in I.A.No.1 of 2019 in O.S.No.6953 of 2013. Accordingly, the trial Court appointed an Advocate Commissioner.



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3. Aggrieved over the said finding, the first defendant has preferred this revision.

4. The learned counsel for the revision petitioner / first defendant submits that there was a settlement arrived that the plaintiffs 2 to 5 to release their 50% of their 1/3rd share over the suit property to the first defendant / petitioner herein but without considering the said settlement, the trial Court ordered to appoint an Advocate Commissioner.

5. The learned counsel appearing for the respondents / plaintiffs submitted that though there was a settlement bequeathed by plaintiffs 2 to 5 but still how much extent on ground is to be identified only after the measurement made by the Advocate Commissioner. Therefore, the objections raised by the revision petitioner, as such is not admissible at this stage.



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6. Considering all the facts, preliminary decree was passed by granting 1/3rd share to the first plaintiff / first respondent herein, 2 to 5 plaintiffs to the 1/3rd share and for first defendant / petitioner herein 1/3rd share. The Advocate Commissioner measured the property, the ground on which how much extent is available can be easily brought to the knowledge of the Court. Thereafter, the settlement proposed by plaintiffs 2 to 5 can be executed.

7. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed. Advocate Commissioner is directed to measure and submit a report, within six weeks from the date of receipt of copy of this order. Thereafter, the trial Court is directed to dispose I.A.No.1 of 2019 in O.S.No.6953 of 2013, within two months from the date of the report of the Advocate Commissioner.

07.11.2023

Index :Yes/No
Neutral Citation :Yes/No
AT



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To
The XIII Asst. Judge, City Civil Court, Chennai.



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T.V.THAMILSELVI, J.

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