



C.R.P.Nos.2593 & 2594 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 28.08.2023

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THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.Nos.2593 & 2594 of 2017

and

C.M.P.No.12369 of 2017

V.Vijayalakshmi

.. Petitioner in both CRPs

Vs.

1. S.Loganathan

2. S.Soundararajan

3. S.Venugopal

4. Hemavathi

5. M.Lokesh

6. M.Gangadharan

.. Respondents in both CRPs

[R4 to R6 – impleaded vide Court order dt.26.10.2022
made in C.M.P.Nos.16208 & 16207 of 2022
in C.R.P.Nos.2593 & 2594 of 2017

Common Prayer: Civil Revision Petitions have been filed under Article 227 of the Constitution of India, praying to set aside the common order passed by the learned Principal Judge, City Civil Court, Chennai in C.M.P.Nos.631 and 630 of 2016 in A.S.S.R.No.51660 of 2007 and 15529 of 2016 on 7th day of October, 2016.



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For Petitioner : Mr.Kalimuthu
for Mr.B.Narayanan
For R1 to R3 : Mr.J.Saravana Vel

COMMON ORDER

These Civil Revision Petitions have been filed by the plaintiff in O.S.No.3007 of 1997 to set aside the common order passed by the learned Principal Judge, City Civil Court, Chennai in C.M.P.Nos.631 and 630 of 2016 in A.S.S.R.No.51660 of 2007 and 15529 of 2016 on 7th day of October, 2016.

2. The order under challenge in the present civil revision petitions came to be passed by the court below declining to condone the delay of 2952 days in re-presenting Appeal Suits by the civil revision petitioner/plaintiff.

3. The suit in O.S.No.3007 of 1997 was filed by the revision petitioner/plaintiff against her siblings seeking partition and separate possession of her 1/5 share in the suit property. The suit property belonged to her mother Sampathu Ammal, wife of V.J.Srinivasa Mudaliar, having been conveyed to her consequent to the decree passed in O.S.No.8958 of 1974 on



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the file of the City Civil Court, Madras. After the demise of the the parents of the plaintiff, she was constrained to file the suit seeking partition of the suit property since some dispute arose among the siblings. The suit was decreed by the Trial Court.

4. Thereupon, contending that though the Suit was decreed for partition of her 1/5 share, it was done by the Trial Court relying upon the Report of the Advocate Commissioner, wherein the suit property was not properly divided by metes and bounds in respect of common passage, the plaintiff/revision petitioner had preferred the Appeal Suits, of course, with a huge delay.

5. On the ground that the delay is an enormous one of about nine years, the Appellate Court, had dismissed the petitions seeking to condone the delay. Aggrieved against the same, the plaintiff has come up with the present civil revision petitions.

6. Having heard the learned counsel appearing for the parties and perused the materials available on record, this court found that the dispute was pending between the siblings for more than two decades, passed an order dated 20.04.2021 referring the matter to mediation.



7. It appears that during the mediation, the parties have arrived at a settlement and as a consequence, a joint compromise memo dated 14.09.2022, which has been duly signed by both the parties and their respective counsel, came to be filed before this Court along with the Mediation Report dated 19.09.2022.

8. Thereafter, on the basis of the compromise arrived between the parties, they have agreed to partition the suit property among themselves and prayed for final decree in terms of compromise memo. This Court, by an order dated 01.12.2022, appointed Mrs.Jayasri Baskar, Advocate, as Advocate Commissioner and directed her to engage the service of a licensed Surveyor to inspect the suit property and divide the same by metes and bounds as per the plan/rough sketch attached with the compromise memo with the help of Surveyor, demarcate the shares of each of the parties by laying stones after giving proper access to all the portion and submit her Report to this Court.

9. Pursuant to the above order, the said Advocate Commissioner has filed the Report dated 07.02.2023, which is extracted hereunder for ready reference:-



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“1. It is respectfully submitted that on 01.12.2022, this Hon'ble Court , by its order, had appointed me as the Advocate Commissioner in C.R.P.Nos.2593 & 2594 of 2017, which is pending disposal before this Hon'ble Court.

2. I submit that by the above order, this Hon'ble Court directed me to inspect the suit property (more detailly described in the schedule of the property) and divide the same by metes and bounds, as per the plan/rough sketch attached with the compromise memo, with the help of the licensed surveyor, demarcate the shares of each of the parties by laying stones, after giving proper access to all the portions. I humbly submit that I was also informed by this Hon'ble Court's order that, I shall engage the service of a licensed surveyor for inspecting and dividing the property by metes and bounds, as per the plan/rough sketch attached with the compromise memo, demarcating the shares of each of the parties by laying stones after giving proper access to all the portion. I was further directed to submit my report, before this Hon'ble Court on or before 20.02.2023. Remuneration of Rs.50,000/- had been fixed, to be directly paid by the respective counsel, to me, which is exclusive of the expenses for engaging the licenced land surveyor.

3. I submit that I received the advocate commissioner warrant with order of this Hon'ble Court on 11.01.2023. On my request to the respective counsel for petitioner and the respondents, copies of relevant papers were given to me on



24.01.2023, by the respective parties.

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4. I submit that I requested and had engaged the service of Mr. Poornachandran, licensed surveyor, for executing the work, directed to be done, by order of this Hon'ble Court, dated 01.12.2023 (stated in correct), Mr.Poornachandran fixed his fees as Rs. 15,000/- to be paid on the spot of inspection at the property site and accepted to do the work. I had informed these to the respective counsels and the parties to the civil revision petitions. I further submit that, I fixed the date of inspection as on 29.01.2023 at 10.00 a.m. for carrying out the work and informed the same to the counsels for petitioner, respondents 1 to 6, Revision Petitioner, respondents 1 to 6 in C.R.P. Nos. 2593 and 2594 of 2017 and the licensed surveyor and all of them, expressed their convenience on that day (29.01.2023) for carrying out the work.

5. I submit that as informed to all concerned, I reached the property site by 10.00 am. On 29.01.2023 and licensed surveyor Mr. Poornachandran, Juniors of the counsel for petitioner and respondents 1 to 3, Revision Petitioner, respondent 2, 3, 6 were present. All of them agreed that the commission work can be started. Before initiation of the Advocate Commission work, petitioner and the respondents 1 to 6, in unison agreed and consented between themselves as to their access to the property, in respect of their portion and signed in the consent memo (attached herewith, with the



report), the content of which is as follows:-

S.Loganathan, S.Soundararajan and S.Venugopal (Respondents 1 to 3) will have access to their respective portions from 43'- 6" road, as in plan /rough sketch attached with the compromise memo. S.Kanthimathi, represented by her legal heirs, respondents 4 to 6, V.Vijalakshmi, revision petitioner, will have access to their share of respective portion from 46 - 9" road, as seen in the rough sketch attached with their compromise memo.

6. I humbly submit that I started the advocate commission work by 10.30 a.m. with the help of the licensed surveyor Mr. Poornachandran, in the presence of the revision petitioner, respondents 2, 3, representatives on behalf of R-1, 4 to 6, Juniors attached to the office of counsels for petitioner and respondents in the revision.

7. I further submit that the work of inspection, division by metes and bounds, laying stone with access to parties, for their way to their share of property was done peacefully, with consent of all concerned, as per the compromise memo with rough sketch. The work was completed by 1.00 p.m. on 29.01.2023.

8. I submit that the proceedings of the advocate commission work, was written at the property site and all concerned in it, signed the same. The said proceedings is attached herewith with the report.



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9. I humbly submit that after completion of commission work, licensed surveyor Mr. Poornachandran, was paid the fees, fixed by him, by all the parties concerned in this case, in unison. I was also paid, my remuneration, at the inspection spot, as directed by this Hon'ble Court.

10. I humbly submit that I had completed the commission work, as directed by this Hon'ble Court, with the engaged service of the licensed surveyor Mr. Poornachandran. I further submit that I am filing the report before this Hon'ble Court as a advocate commissioner, as directed by this Hon'ble Court."

10. In the meanwhile, Respondents 1 to 3, contending that as per the new patta issued, the survey number of the property is stated to be T.S.No.1, filed Applications in C.M.P.Nos.6414 & 6417 of 2023 in C.R.P.Nos.2593 & 2594 of 2017 seeking to amend the survey number in the description of the schedule of the property as T.S.No.1 instead of T.S.No.30 and this Court, by an order dated 27.03.2023, has allowed those petitions. The Report of the Advocate Commissioner along with the Rough Sketch is taken on record, whereby, the property has been partitioned and each of the parties have been allotted with 389 Sq.ft. The Advocate Commissioner has also filed the consent memo signed by all the parties for access to land by all the parties.



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11. Today, when the matter is taken up, the parties are present before this Court and they agree to abide by the Report and the Rough Sketch of the Advocate Commissioner.

12. Learned counsel for respondents 1 to 3 submitted that the parties themselves have demolished the existing building which was in a dilapidated condition and they have agreed to take their respective shares as per the rough sketch as allocated by the Advocate Commissioner.

13. In view of the settlement arrived between the parties by way of Joint Compromise Memo dated 14.09.2022, these Civil Revision Petitions stand disposed of. The Joint Compromise Memo dated 14.09.2022, the Report dated 07.02.2023 alongwith the Rough Sketch filed by the Advocate Commissioner and the Consent Memo for access to the land by all parties dated 29.01.2023 shall form part of the Decree. No costs. Consequently, the connected miscellaneous petition is also closed.

28.08.2023

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No



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A.D.JAGADISH CHANDIRA, J.,

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To

1. The Principal Judge, City Civil Court, Chennai.
2. The Section Officer, VR Section, Madras High Court.

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