



WEB COPY

CRP(PD)Nos.2989 & 2990



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(PD)Nos.2989 & 2990 of 2017
and C.M.P.Nos.14110 & 14111 of 2017**

Periyasamy

... Petitioner in
both CRPs.

Vs.

1.Ramasamy

2.Marappan

... Respondents in
both CRPs.

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 14.07.2017 in I.A.Nos.8 & 9 of 2017 in O.S.No.179 of 2013 on the file of the Principal District Munsif Court, Tiruchengodu.

In both the CRPs.

For Petitioner : Mr.N.Sivaprakash

For Respondents : Ms.M.Adhishree



COMMON ORDER

Heard the learned counsel for the civil revision petitioner and the learned counsel for the respondents. I have carefully gone through the records.

2. The revision petitions arise against an order passed by the learned Principal District Munsif, Tiruchengodu, dated 14.07.2017 in I.A.Nos.8 & 9 of 2017 in O.S.No.179 of 2013.

3. The civil revision petitioner is the plaintiff and the respondents are the defendants. The suit is for partition. A preliminary decree was passed without any dispute on 27.01.2014. The plaintiff did not take steps for the purpose of appointment of an Advocate Commissioner. Therefore, the defendants filed I.A.No.507 of 2014 for the purpose of appointment of an Advocate Commissioner. The said application was allowed and one Mr.G.Saravanan was appointed as an Advocate Commissioner.

4. The entire dispute arose during the inspection of the Advocate Commissioner on 06.11.2016. The civil revision petitioner made unsavory allegations against the Advocate Commissioner. However, the same was not backed up by evidence. Therefore, the application filed by the plaintiff to scrap the report of the Advocate Commissioner in I.A.No.8 of 2017 came to be dismissed. Consequently, the trial Court dismissed I.A.No.9 of 2017 refusing to appoint a fresh Advocate Commissioner.



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5. Ms.M.Adhishree, learned counsel appearing for the respondents would submit that the Advocate Commissioner has already submitted a report. But the Court has not acted upon the same on account of the stay granted in these revisions.

6. Mr.N.Sivaprakash, learned counsel for the civil revision petitioner would submit that the Advocate Commissioner despite an order of stay, went against that order and filed a report.

7. Be that as it may, as on today, there is a report of an Advocate Commissioner, which has been filed, which is yet to be tested by the Court. A report of an Advocate Commissioner in a suit for partition, especially in the final decree is only to “Suggest” the mode of division. It is not final. The plaintiff can always file the objections to the report stating that the suggestion made by the Advocate Commissioner is not convenient for enjoyment of both the parties. It is always open to the Court to come to an independent conclusion from the report of the Advocate Commissioner. Whatever the objections the civil revision petitioner/plaintiff has, he may say so in his objection to the report.

8. As no concrete proof has been produced before the Court in order to substantiate the allegations made against the Advocate Commissioner, I am not inclined to interfere with the order. However, I make it clear, on the basis of the



objections, if it becomes clear that the Advocate Commissioner's report does not give a feasible mode of division or causes inconvenience to one of the parties, the Trial Court is free to appoint a fresh Advocate Commissioner for the purpose of division.

9. Granting a liberty to file an objection to the report of the Advocate Commissioner, the Civil Revision Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

The Principal District Munsif, Tiruchengodu.



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V.LAKSHMINARAYANAN,J.

Kj

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