



C.R.P.No.3197 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2023

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THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P(PD).No.3197 of 2017

and

C.M.P.No.14944 of 2017

and

C.M.P.No.16749 of 2023

M.Chandramohan

...Petitioner/Plaintiff/Petitioner

Vs.

J.P.Sudhakaran

...Respondent/Defendant/Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution

of India to allow the above C.R.P. by setting aside the order dated

18.08.2017 passed in I.A.No.103 of 2017 in O.S.No.32 of 2017 on the

file of the Additional Sub-Court, Tiruppur.

For Petitioner : Mr.C.Vigneshwaran
: for M/s.K.Govi Ganesan

For Respondent : Served through paper publication.



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ORDER

The suit is for a partition. In the said suit an application was filed for interim injunction restraining the defendants from putting up further construction in and over the property.

2.On 17.02.2017, the learned Judge passed the following order:-

“17.02.2107

IFN to respondent Advocate. S.N.Vijayalakshmi, filed Vakalath for respondent. Petitioner counsel stated at both parties relationship and right of share is admitted but with regard to further construction not to be carried out till further settlement. Respondent counsel and respondent also present. Respondent also stated that he undertakes to maintain status quo till then. Suit hearing on 17.03.2017. As per the oral undertaking of the respondent himself in the open court, Status Quo is to be maintained till 17.03.2017.”

3.The matter was adjourned for inquiry on 17.03.2017, 20.04.2017, 01.07.2017, 14.07.2017, 18.08.2017 and on 21.07.2017. On 21.07.2017, the learned Judge passed the following order:-

“Order Pronounced

Hence Advocate Thiru.V.Venkatachalamoorthi, is appointed as Advocate Commissioner and his remuneration is Rs.5,000/- is to be paid by the defendant directly. After serving notice to both side parties and both side counsels, the Advocate Commissioner with the help of qualified Thaluk Surveyor of Tiruppur for the purpose



of division of the suit properties with metes and bounds and allot one such share to the petitioner and also to file report with plan on 18.08.2017.”

4.A perusal of the order shows that even before the preliminary decree was passed, the learned Judge has appointed an Advocate Commissioner to divide the suit properties.

5.Mr.C.Vigneshwaran learned counsel for the petitioner representing M/s.K.Govi Ganesan, will point out the jurisdiction to appoint an Advocate Commissioner for the purpose of division of properties should be preceded by a preliminary decree passed by the court.

6.A final decree is initiated for the division of property and an Advocate Commissioner is appointed to suggest the mode of division only on passing of the preliminary decree.

7.Here is a case where the relationship of the parties are admitted. Therefore, the Court could have passed the preliminary decree and thereafter appointed an Advocate Commissioner.



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8.To appoint an Advocate Commissioner and thereafter call for the written statement is like putting the cart before the horse. Such a mode of an appointment of an Advocate Commissioner is un-known to Civil Procedure. Therefore, the order passed by the learned Judge on

V. LAKSHMINARAYANAN.J,

nsf
21.07.2017 in appointing an Advocate Commissioner to divide the properties by metes and bounds and allotting one such share is set aside.

9.The learned Judge shall take up the application for injunction and pass orders for the same. Thereafter, the learned Judge shall take up the application in I.A.No.103 of 2017 and pass orders for the same and after the receipt of the written statement, he shall dispose of the suit within a period of nine (9) months from today.

10.This Civil Revision Petition stands allowed with the above directions. No costs. Connected civil miscellaneous petitions are closed.

17.08.2023



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Index : Yes/No

Speaking Order : Yes/No

Neutral Citations: Yes/No

To:

The Additional Sub Judge,
Tiruppur.

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