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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

CRP.No.3970 of 2019
and
CMP.No.26144 of 2019

Suresh Babu

... Petitioner

Vs

1.Mohan @ Ravi
2.Manoharan
Rukkumani (Died)
3.Meenakshi
4.Kasturi
5.Sasikumar
6.Savithiri
7.Pramila
8.Girija
9.Nithiya
10.Nalina

... Respondents

(The respondents herein 3 to 10 is all are formal parties in I.A.No.6 of 2015 in O.S.No.5 of 2010. So that dispense with the Court Notice in the above Civil Revision Petition)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 19.10.2019 in I.A.No.6 of 2015 in O.S.No.5 of 2010 on the file of Subordinate Judge at Gudiyatham Vellore District.



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For Petitioners : M/s.S.Arivazhagan

ORDER

The civil revision petition arises against the order passed by the Sub Judge, Gudiyatham, Vellore in I.A.No.6 of 2015 in O.S.No.5 of 2010. The suit is one for partition and separate possession. The suit was decreed on 30.08.2013 and an application was taken for passing of final decree in I.A.No.6 of 2015. Subsequently, an Advocate Commissioner was appointed to suggest the mode of division. The Advocate Commissioner had also visited the suit site and submitted a report stating that the property is incapable of division. To this, an objection has also been filed by the 10th defendant.

2. At this stage, the learned Sub Judge, Gudiyatham found that since the property is incapable of division, the parties may file an application for sale of the property under Section 2 of the Partition Act. Against which, the present Civil Revision Petition has been filed.

3. Mr.S.Arivazhagan, learned counsel for the petitioner submitted that he is in occupation of the property and that has not been considered by the Advocate Commissioner. He also stated that he has filed his objections to



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the Advocate Commissioner's report. Therefore, the order of the trial Court, ordering the final decree is erroneous.

4.I have carefully considered the arguments of the petitioner.

5.The mere fact that the petitioner is in possession of the property does not mean the Court cannot proceed and pass a final decree. The option for the petitioner is either to purchase the property in the sale that will be ordered by this Court in terms of Section 2 of the Partition Act or to receive his share from the amounts that comes into the Court pursuant to a sale.

6. The Court below having come to a conclusion that the property is incapable of division, the only option left with the petitioner was to seek for purchase of the property. It is open to the 10th defendant to file an application under Section 2 of the Partition Act and work out his rights. I do not find any error in the order passed by the learned Sub Judge, Gudiyatham, Vellore in I.A.No.6 of 2015 in O.S.No.5 of 2010.



V.LAKSHMINARAYANAN,J.,

vkrr

7. Accordingly, this Civil Revision Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petition is also closed.

27.09.2023

Index:Yes/No
Speaking order/Non-speaking order
vkrr

To :

The Subordinate Judge at Gudiyatham,
Vellore District.

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