



WEB COPY



Rev.Appl.No228/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM: JUSTICE N.SESHASAYEE

Rev.Appl.No.228 of 2023
in CMA.No.341 of 2022

1.S.Muthulakshmi
2.S.Rajendran

... Appellants

-Vs-

R.Ranjithavalli

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 114 r/w Order 47 Rule 1 and 151 of CPC to review the order dated 11.12.2023 passed by this Court in CMA.No.341 of 2022.

For Appellant : Mr.T.Balaji
For Respondent : M/s.D.Chitra Maragatham

ORDER

The Review petition is filed by the respondents in C.M.A.No.341 of 2022, who are the defendants in O.S.No.386 of 2021 on the file of II Additional District Court, Tiruppur.



Rev.Appl.No228/2023

2.The plaintiff is a purchaser of a certain undivided share of suit property from the defendants 2 and 4 (the Review petitioners herein) under a sale deed dated 19.12.2005. The 1st defendant to the suit is a co-owner under the said sale deed. It is to partition the portion that she is entitled to under the said sale deed, the plaintiff had laid the suit.

3. The learned counsel for the review applicants/respondents 1 and 2 stated that in paragraph No.3 of the order of this Court dated 11.12.2023, this Court has correctly captured this basic facts. However, when it proceeded to paragraph No.4 of the order, it appears to have entertained an idea, rather inadvertently, that the property sold to the plaintiff and the 1st defendant is well defined by specific boundaries and this has led the Court to direct the appointment of a Commissioner by the trial Court.

4.Heard the learned counsel for the review applicants (defendants 2 and 4). He presented the case on facts. According to him, these defendants impugned the very sale deed on which the plaintiff rests her cause of action for the suit and also submits that there is a final decree in favour of these parties in O.S.No.64 of 2013.



Rev.Appl.No228/2023

WEB COPY

5.The learned counsel for the plaintiff / appellant hurries to make a statement that her client was not a party to that suit and hence it does not bind on her.

6. This Court weighed rival submissions and finds that there is an apparent error on the face of the record. This Court, therefore, is constrained to modify the operative portion of its order dated 11.12.2023 and it will now run as below:

“4.The dispute raised is one for trial and this Court cannot preempt a finding on that in this proceeding. The nature of the order passed by the trial Court which is now impugned in this appeal only indicates that it has chosen to play the cards safe by trying to balance the interest of the defendants by letting the construction happen but added a rider that its continued existence on the plot of land on which it is constructed will depend on the outcome of the suit.”

7. Now notwithstanding the above modification made to paragraph 4 of the order of this Court dated 11.12.2023, this Court still does not intend to change its decision to appoint a Commission. This Court only requires



Rev.Appl.No228/2023

WEB COPY

the trial Court to appoint a Commissioner who is reasonably regular to the Court and also has reasonable exposure to civil litigation to ascertain the present physical features of the property which may be beneficial to the Court at the later stage of the suit. The remuneration for the Commissioner will be fixed by the trial Court and it will be at the expenses of the appellant/plaintiff.

8.This revision application stands disposed of accordingly. No costs.

22.12.2023

Tsg/kas



WEB COPY



Rev.Appl.No228/2023

N.SESHASAYEE, J.,

Tsg/kas

Rev.Appl.No.228 of 2023

22.12.2023