



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Wednesday, the Eighteenth day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P.B. BALAJI

CMP(MD). No.10612 of 2018
in
CRP(MD) No.1671 of 2016

1. B.Indra(Died)

2.M.Ram Prasad

3.B.Vanmathi

(3rd Petitioner is brought on record on LR of the deceased 1st Petitioner vide court order dated.11.01.2023 made in CMP.(MD).Nos.10889 & 10902 of 2021 in CRP(MD) No.1671 of 2016.
... Petitioner/Respondents 4 &7

Vs

1 S.Paramasivam

2 P.Raja @ Solaimalairaja

...Respondents 1&2/Petitioners

3 M.Umarani (Died)

4 S.Manimakala

5 C.Mankayarkarasi

6 Vanitha

7 Amutha

8 M.Sharmila

... Respondents 3 to 7/Respondents 1 to 3,5,6 &8



Prayer in CMP(MD). No.10612 of 2018:-

This Civil Miscellaneous petition is filed under order 41 Rule 21 of C.P.C., to pass an order setting aside the order dated 17/09/2018 passed in the Civil Revision Petition in CRP(MD)No.1671 of 2016 and rehear the same.

Prayer in CRP(MD) No.1671 of 2016:-

This Civil Revision Petition is filed under section 115 of C.P.C., to call for the records pertaining to the I.A.No.127 of 2015 in I.A.No.428 of 2011 In O.S.No.191 of 2008 dated 18.11.2015 on the file of the I Additional District Court, Madurai.

ORDER:-

This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.H.Arumugam, Advocate for the Petitioner and of T.Sivanathan For R1 &2, and of Mr.V.Karthick Raja for R6 & R8 this Court made the following order:

“The respondents 4 and 7 as petitioners have taken out the above Civil Miscellaneous Petition, seeking to rehear the Civil Revision Petition on merits.

2. The brief facts of the case are that the Civil Revision Petition has been filed challenging the order of dismissal of I.A.No.127 of 2015, which was filed to condone the delay of 542 days in filing the petition to set aside the *exparte* order passed in I.A.No.428 of 2011 for appointment of an Advocate Commissioner in the



final decree proceedings arising out of a suit for partition.

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3. The Civil Revision Petition came to be allowed without serving notice on the petitioners herein. This is one of the grievances of the petitioners in seeking to set aside the order passed in the Civil Revision Petition. Further, he also contended that the final decree was already passed on 22.12.2014 and the order which is sought to be set aside has stood merged with the final decree and subsequent to the appointment of an Advocate Commissioner, the revision petitioners participated in the inspection of the properties and they also gave suggestions to the Advocate Commissioner for division of the property by metes and bounds. Thus, according to the petitioners, the revision ought to have been dismissed. However, as they have not been served with notice and were not in a position to bring to the notice or knowledge of this Court, an order came to be passed, allowing the revision. The contesting respondents have not appeared in person or through counsel. In fact, on the hearing date, viz., 09.10.2023, subsequent to the revision being adjourned to 11.10.2023, the learned counsel for the contesting respondents appeared and made a request that he would make his submissions on 11.10.2023. However, despite the said assurance, today also, when the matter was called, there was no representation for the contesting respondents and all other respondents were represented by counsel and they have stated that they have no objection for the Civil Miscellaneous Petition being allowed and they are only sailing with the petitioner in the Civil Miscellaneous Petition.



4. I have heard Mr. H.Arumugam, learned counsel for the petitioners, Mr.T.Sivanathan, learned counsel for the respondents 1 and 2 and Mr.V.Karthick Raja, learned counsel for the respondents 6 & 8 and I have also perused the records.

5. It is seen from the additional typed set of papers filed by the learned counsel for the revision petitioners in the above Civil Miscellaneous Petition that as late as 13.08.2022, the contesting respondents 1, 2 and 7 have chosen to convey properties which fell to their share under the final decree. The said deed is a registered sale deed, duly registered as document No.11495/2022 on the file of the Joint Registrar No.4, Madurai.

6. Thus, it is seen that the contesting respondents have accepted the final decree and dealt with the properties allotted to them. Unfortunately, when the revision was heard on the earlier occasion and final order was passed, the petitioners herein have not been served and without hearing them, the revision came to be allowed, condoning the delay in filing the application seeking to set aside the appointment of an Advocate Commissioner. In any event, it is an admitted fact that after the appointment of Advocate Commissioner, the contesting respondents have, in fact, participated during the inspection process and they have also given their suggestions for division of the properties in question. Thus, absolutely no prejudice would be caused to the contesting respondents as they have not been denied any opportunity and they have been allowed to participate in the

Advocate Commissioner Inspection process. Moreover, with the passing of the final



decree, the order in the Advocate Commissioner application stood merged with the final decree.

7. Further, from the additional typed set, it is also seen that subsequent to the final decree being passed, the contesting respondents have in fact, dealt with some of the items of the property allotted to them under the final decree. I find force in the submissions of the learned counsel for the petitioners in the Civil Miscellaneous Petition that once the final decree was passed, the order appointing an Advocate Commissioner would automatically get merged with the final decree and there is no useful purpose in challenging the order of appointing an Advocate Commissioner alone.

8. For all the above reasons, I find merit in the contentions of the petitioner in the present Civil Miscellaneous Petition. Consequently, C.M.P. (MD) No. 10612 of 2018 is allowed."

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/12/2023

Sub Assistant Registrar(CS)



To

1.The I Additional District Judge,
Madurai.

2.The Section Officer,(2C)
VR Section, Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-48601[F] dated 19/10/2023)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-48812[F] dated 20/10/2023)

ORDER DATED : 18/10/2023

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ORDER

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CMP(MD). No.10612 of 2018

in

CRP(MD) No.1671 of 2016

SI (21.12.2023) 6P/ 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.