



CRP(MD)No.2620 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **16.11.2023**

CORAM

THE HONOURABLE **MR.JUSTICE P.B. BALAJI**

C.R.P.(MD)No.2620 of 2018
and
C.M.P.(MD)No.11482 of 2018

Mary Johnsy

...Petitioner

/Vs./

1.Justus

Represented by his power agent,
Mary Metilda

2.Lawrence

3.Mariarani

4.Christopher

5.Kalarani

6.Sunitharani

7.Jayarani

8.Sheebarani

...Respondents

PRAYER:- Petition - filed under Section 115 of the Civil Procedure Code, 1908, to set aside the fair order in I.A.No.439 of 2017 in O.S.No.182 of 2014 on the file of the I Additional District Munsif, Kuzhithurai, dated 03.08.2018 by allowing this civil revision petition.



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For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.C.Godwin (R1)

No appearance (R2 to R8)

ORDER

Aggrieved by the order dated 03.08.2018, passed by the I Additional District Munsif, Kuzhithurai in IA No.439 of 2017 in O.S.No.182 of 2014, the present civil revision petition has been filed.

2. The first defendant in the suit is the revision petitioner herein. The plaintiff is the first respondent who is represented by his power agent / wife. The application in IA No.439 of 2017 has been filed by the first respondent / plaintiff in the partition suit, seeking for appointment of an Advocate Commissioner to carve out a plot allotting his share in terms of the preliminary decree.

3. The trial Court allowed the said application and appointed an Advocate Commissioner and a direction was issued to the Advocate Commissioner to visit all the schedule properties after due notice to both sides, note down physical features of the properties, take measurements wherever necessary and file a detailed report and plan.



4. It is aggrieved, by this order that the revision petitioner / first defendant has preferred the present revision on the ground that the preliminary decree entitles the first respondent / plaintiff to 571 sq.links of land in the suit schedule properties and the properties cannot be enjoyed by more than one party to the litigation and the properties will have to be allotted to the revision petitioner / first defendant. However, the trial Court has directed the Advocate Commissioner to proceed, without noting the objections of the revision petitioner / first defendant that the properties are indivisible.

5. Heard Mr.M.Saravanakumar, learned counsel for the revision petitioner / first defendant and Mr.C.Godwin, learned counsel for the first respondent / plaintiff and perused the materials placed before this Court.

6. However, on reading of the order passed in IA No.439 of 2017 in O.S.No.182 of 2014, I find that the trial Court has only directed the Advocate Commissioner to inspect the properties and file a report. The question of placing the respective parties in physical possession and the stage of passing of a final decree has not yet been reached. The first stage in the final decree proceedings alone has been ordered by the Court below and the revision petitioner / first defendant cannot be aggrieved by the said order.



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7. It is always open to the revision petitioner / first defendant to take all his objections and contentions, after the Advocate Commissioner files his report and also make a request in terms of the provisions of the Partition Act, in the event of the Advocate Commissioner giving a report that the properties are indivisible, in which case, the revision petitioner / first defendant is always entitled to seek for allotting the subject property to her in terms of the Partition Act.

8. The revision petitioner / first defendant cannot claim to be aggrieved by the appointment of Advocate Commissioner to merely inspect the property and file a detailed report and plan and therefore, the impugned order does not warrant any interference. This civil revision petition is dismissed with the aforesaid liberty to the revision petitioner / first defendant to work out her remedy before the trial Court. No costs. Consequently, connected miscellaneous petition is closed.

16.11.2023
(2/2)

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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TO:-

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- 1.The I Additional District Munsif, Kuzhithurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B. BALAJI, J.

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Order made in
C.R.P.(MD)No.2620 of 2018

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16.11.2023