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C.R.P.No.1275 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1275 of 2021 and
C.M.P.No.3652 of 2024

1.Vijayalakshmi
2.Amudha

... Petitioners

Vs.

1.A.Govindasamy
2.G.Kanaga
3.Tamilselvi
4.Balasubramaniam
Periannan (died)
5.Arivalagan
Sadasivam (Died)
6.Kullammal
7.Santha
8.Shivashanmugam
9.Nallappan
10.Thangam
11.Mohanapriya
12.Kavi

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order passed in



C.R.P.No.1275 of 2020.

I.A.No.576 of 2019 in I.A.No.577 of 2015 in O.S.No.31 of 2004 on the file of the learned III Additional District Judge of Salem dated 02.03.2020.

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For Petitioner	: M/s.G.Devi for V.Ragupathy
For respondents 1,2 ,4 to 12	: Give up
For respondent 3	: M/s.A.Sundaravadhanan

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the final decree petition filed by the petitioners for default.

2. The petitioners obtained a preliminary decree for partition in O.S.No.31 of 2004. Thereafter, a final decree application was filed in I.A.No.577 of 2015 and the said application was dismissed for default on 18.09.2019. The petitioner filed I.A.No.576 of 2019 seeking restoration of the final decree application which was dismissed for default. The said application was dismissed by the Trial Court and aggrieved by the same, the petitioners are before this Court.



3. The learned counsel for the petitioners submits that Advocate Commissioner who was appointed by the Court in the final decree proceedings failed to measure the land with the Surveyor in respect of request made by them and hence, the final decree petition was dismissed for default.

4. The reason assigned in the affidavit filed in support of the petition of restoration of the final decree petition may not be correct.

5. A perusal of the impugned order would suggest that the petitioners failed to appear in the final decree proceedings for several hearings and also failed to pay remuneration to the Advocate Commissioner and on the memo filed by the Advocate Commissioner, the final decree petition was dismissed for default. It is settled law that there is no limitation for filing final decree petition and the present final decree petition filed by the petitioners is dismissed for default and the same will not preclude the petitioners from filing another application for passing final decree. In such circumstances, instead of driving the petitioners to file another final decree petition, this court feels that it would be appropriate to restore the present final decree petition by imposing



heavy cost on the petitioners.

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6. Taking into consideration the facts and circumstance of the case, the Civil Revision Petition is allowed on condition that the petitioners shall pay a sum of Rs.10,000/- (Rupees ten thousand only) as cost to the 3rd respondent herein, who is represented by counsel in this revision within a period of two weeks from today. Failing compliance, the Civil Revision Petition shall automatically stand dismissed.

7. The petitioners are permitted to pay the cost by way of Demand Draft in the name of 3rd respondent and the same may be handed over to the counsel for the 3rd respondent.

8. It is seen from the impugned order that the Trial Court ordered remuneration of Rs.5000/- to the Advocate Commissioner and the same was not paid by the petitioners. It is open to the Trial Court to fix quantum of remuneration to Advocate Commissioner afresh, taking into consideration the present circumstances.



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9. With these directions, the Civil Revision Petition stands allowed. No costs. CMP.No.3652 of 2024 filed by the petitioners is closed with liberty to file appropriate amendment application before the Trial Court.

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Index : Yes / No
Internet : Yes / No
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To
The learned III Additional District Judge of Salem



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S.SOUNTHAR, J.

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