



C.R.P.(PD).No.390 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.390 of 2020
and CMP.No.2055 of 2020

V.Shanmugam

... Petitioner

vs.

1.A.Vijayalakshmi
2.M.V.Viswanathan
3.P.Kowsalya
4.P.Sowmya
5.P.Rajkumar
6.Valarmathi
7.Praveenkumar
8.Divyardarshini

(Respondent – 2 died. Respondent 6 to 8 brought on record as Lrs of the deceased R-2 viz., M.V.Viswanathan vide Court Order dated 02.06.2023 made in CMP.Nos.9595 and 9508 of 2023 in CRP.No.390 of 2020 by SSKJ)

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the docket order dated 11.07.2019 made in I.A.No.242 of 2015 in O.S.No.66 of 2014 passed by the III Additional



C.R.P.(PD).No.390 of 2020

District and Sessions Court, Thiruvallur, Poonamallee.

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For Petitioner	: Mr.R.Krishnasamy
For Respondents	: Mr.K.Venkatesan for R1 R2-died No Appearance for R3, R4, R5, R6, R7 and R8

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below directing the respondent/plaintiff to amend the preliminary decree as well as the final decree petition.

2. The first respondent herein filed a suit for partition of 1/4th share against the petitioner and other respondents. The preliminary decree for partition was already passed and based on the same, the first respondent filed I.A.No.242 of 2015 for passing a final decree. In the final decree proceedings the Advocate Commissioner was appointed to suggest the mode of revision. The Advocate Commissioner who visited the property with the help of surveyor identified the suit property with reference to survey number and the four boundaries mentioned in the warrant issued to him. The report filed by Advocate Commissioner would indicate two different properties, namely one



identified with reference to survey number and other with reference to four boundaries. The property identified with reference to four boundaries falls in S.No.41/1. Therefore, he filed an interim report before the Court seeking a direction from the Court, whether he should proceed to file a report suggesting mode of division with regard to the property identified by him with reference to four boundaries or with regard to the property with reference to survey number mentioned in the final decree petition.

3. Taking into consideration the report filed by the Advocate Commissioner, if the property is identified with reference to the survey number and four boundaries, it points to two different properties, the trial Court observed that if there is a conflict between the survey number and four boundaries, the four boundaries will prevail over the survey number and hence directed the first respondent/plaintiff to amend the survey number of the property found in the preliminary decree as well as the final decree petition. Aggrieved by the same, the petitioner/first defendant is before this Court.



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4. The learned counsel appearing for the petitioner submits that Advocate Commissioner has not identified the property with reference to the survey number. According to him, the boundaries of the suit properties mentioned on East, West and North differs with the boundaries available on the ground and the same has not been noted by the Advocate Commissioner.

5. Now, the first respondent/plaintiff has been given liberty to file application for amendment of survey number found in the preliminary decree as well as final decree petition. In case, any such amendment application is filed by the first respondent/plaintiff, it is always open to the petitioner herein to raise his objection by filing a counter. Therefore, the petitioner is not aggrieved by liberty given to the first respondent to file an amendment application.

6. Therefore, I do not find anything to interfere with the order passed by the Court below.



C.R.P.(PD).No.390 of 2020

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7. Accordingly, the Civil Revision Petition is dismissed with liberty to the petitioner to raise his objection to the amendment application, if any, filed by respondent. No costs. Consequently, connected miscellaneous petition is closed.

13.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The III Additional District and Sessions Court,
Thiruvallur, Poonamallee.



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C.R.P.(PD).No.390 of 2020

S.SOUNTHAR, J.

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C.R.P.(PD).No.390 of 2020

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