



C.R.P.No.421 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.421 of 2024
and C.M.P.No.2009 of 2024

R.Kandhasamy Gounder

... Petitioner

Vs

R.Nachimuthu Gounder (Died)

1. N.Palanisamy

2. P.Jothimani

3. B.Sagunthala

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, pleaded to set aside the fair and final order of the learned Subordinate Judge, Palladam made in E.A.No.1 of 2023 in E.P.No.10 of 2018 in O.S.No.533 of 2002 dated 16.11.2023.

For Petitioner : Mr.M.R.Thangavel

For Respondents : Mr.R.Jayaprakash



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ORDER

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Palladam made in E.A.No.1 of 2023 in E.P.No.10 of 2018 in O.S.No.533 of 2002 dated 16.11.2023.

2. The brief facts of the case is that one R.Nachimuthu Gounder/plaintiff had filed a suit against the petitioner/defendant, who is his brother, in O.S.No.533 of 2002 before the Subordinate Court, Tiruppur, seeking for a relief of partition of suit schedule properties. The defendant was set ex parte and the trial Court had passed a preliminary decree on 01.08.2003 to divide the suit schedule properties to be divided into two equal shares and allot one share to the plaintiff therein. The plaintiff/father of the respondents had preferred an interlocutory application in I.A.No.146 of 2005 in O.S.No.533 of 2002 seeking for appointment of an Advocate Commissioner to divide the suit properties into two equal shares by metes and bounds and allot one share to him and also putting him in the actual possession in the said share allotted to him and the trial Court, by an order dated 21.06.2006, appointed an Advocate Commissioner to inspect the suit properties



and to file the Report along with the plan. The Advocate Commissioner inspected the suit properties on 14.07.2006 and filed the Report on 28.09.2006. Thereafter, based on her Report, the trial Court had passed the final decree on 07.11.2006. Aggrieved against the same, the petitioner had preferred an appeal before the IInd Additional District and Sessions Judge, Tiruppur and the same was dismissed by the first appellate Court on 01.07.2015.

3. Thereafter, against the dismissal of the first appeal, the petitioner has preferred a second appeal before this Court in S.A.No.891 of 2017. Meanwhile, the plaintiff had preferred an execution petition before the Sub Court, Tiruppur, in E.P.No.110 of 2007 in O.S.No.533 of 2002 seeking for execution of the final decree. The petitioner had also preferred an obstruction petition in E.A.No.245 of 2015 under Section 47 of CPC and the Subordinate Court had ordered delivery of the property and possession of Item No.1 of the suit property was delivered to the said R.Nachimuthu Gounder on 27.04.2017 and the possession in respect of item No.2 was not delivered as the property was within the Coimbatore District. The execution petition was ordered on 14.04.2017. Aggrieved against the said order passed by the Sub Court, Tiruppur, the petitioner has filed a civil revision petition



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in C.R.P.No.1917 of 2017 before this Court and both C.R.P.No.1917 of 2017 and S.A.No.891 of 2017 were heard together by this Court and dismissed by a common judgment dated 08.11.2022.

4. Meanwhile, the execution petition in E.P.No.110 of 2007 in O.S.No.533 of 2002 was transferred to the file of the Subordinate Court, Palladam and re-numbered as E.P.No.10 of 2018 and E.A.No.245 of 2015 was re-numbered as E.A.No.16 of 2018. Since, the petitioner had alleged collusion and fraud upon the Advocate Commissioner while dividing the suit property, had preferred an application in E.A.No.1 of 2023 in E.A.No.16 of 2018 in E.P.No.10 of 2018 under Order XXVI Rule 10 (2) r/w Section 151 of CPC to examine the Advocate Commissioner appointed in I.A.No.146 of 2005 in O.S.No.533 of 2002. Pending the said application, the said R.Nachimuthu Gounder passed away and his legal heirs/respondents herein were impleaded in the said application vide order dated 21.03.2023 in I.A.No.05 of 2023.

5.The respondents had filed a counter in E.A.No.1 of 2023 contending that



the petition seeking to examine the Advocate Commissioner is not maintainable and it was filed only to drag on the proceedings. The Executing Court, vide order dated 16.11.2023, had dismissed the application filed by the petitioner in E.A.No.1 of 2023. Challenging the same, the present revision petition has been filed.

6. Mr.M.R.Thangavel, learned counsel for the petitioner submitted that the petitioner was not put on notice when the local inspection was conducted. Further the trial Court, without allowing the petitioner to raise his objection to the Advocate Commissioner's Report, had accepted the Report and passed the final decree. He further submitted that the petitioner has not disputed the division of the suit property, however, the dispute is only concerning the manner in which it was divided. He also submitted that the division should benefit for the convenience of both the parties, whereas, the Commissioner had ignored the same and it could be elicited only by way of examining the Advocate Commissioner.

7. Learned counsel for the respondents submitted that the respondents have also filed a counter in E.A.No.1 of 2023 contending that on the very same ground that the petitioner was not given a liberty to challenge the Advocate



Commissioner's Report, the petitioner had preferred the first appeal in A.S.No.82 of 2010 before the II Additional District and Sessions Judge, Tiruppur and the first appellate Court, after the detailed hearing, had dismissed the appeal stating that despite several opportunities given to the petitioner, he had not presented himself for inspection and that despite the filing of the Advocate Commissioner's Report, he has not filed any objection and therefore, the final decree was passed on 07.11.2006. Against which, the petitioner had preferred a second appeal before this Court in S.A.No.891 of 2017 and even there the dispute regarding the Advocate Commissioner was raised and it was rejected and the final decree was confirmed. He further submitted that there is no dispute with regard to the measurement of the properties and the Advocate Commissioner, finding that the petitioner's house is situated in the portion B and the shed is in portion B2, had properly done the division and the first appellate Court had also recorded the same.

8. He further reiterated that the preliminary decree was passed on 01.08.2003 and thereafter, the respondents' father had preferred I.A.No.146 of 2005 for appointment of the Advocate Commissioner and thereafter, based on the Report, final decree was passed on 07.11.2006. He also submitted that the



petitioner failed to raise these grounds at the stage when the case was posted for delivery. Therefore, having raised the dispute regarding the Advocate Commissioner before the first and second appellate Court and both Courts having already upheld the passing of the final decree, the application seeking to examine the commissioner at this stage is unnecessary.

9. Heard the learned counsel appearing for both the petitioner and the respondents and perused the materials available on record.

10. Having gone through the records, this Court can see that a similar ground was raised before the first and second appellate Court and the same has been negated by both the Courts. Therefore, this Court is of the view that the Subordinate Court, Palladam, rightly found that the petition filed for examination of the Advocate Commissioner was not at all necessary at that stage and it had been filed only to drag the proceedings, had dismissed the application.

11. In view of the above, this Court does not find any illegality or infirmity in the order passed by the executing Court. Accordingly, the Civil Revision



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Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

The Subordinate Court, Palladam



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A.D.JAGADISH CHANDIRA, J.
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