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C.R.P. No. 931 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2024

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THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 931 of 2021
and
C.M.P. No. 7538 of 2021

Pongiammal

... Petitioner / Petitioner /
1st Respondent / 1st Defendant

Vs.

1. S.M.Palaniappan

2. S.M.Kandappan

3. Kaliasammal

4. Valliammal

5. Kandayal
/

... Respondents / Respondents 1-5

Petitioners / Plaintiffs 2 - 6

6. K.S.Easwari

... Respondent / 6th Respondent /
2nd Respondent / 2nd Defendant

7. K.S.Easwaran

... Respondent / 8th Respondent /
4th Respondent / 7th Plaintiff

8. K.Kamalam

9. S.K.Balasubramani



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10. K.Daivani

11. Bagyalakshmi

... Respondents / Respondents 9 - 12 /
No parties in I.A. No. 208 of 2004 /
No parties in O.S. No. 16 of 2002

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and decreetal order dated 09.01.2020 made in I.A. No. 1512 of 2018 in I.A. No. 208 of 2004 in O.S. No. 16 of 2002 on the file of the III Additional District and Sessions Judge, Gobichettipalayam.

For Petitioner : M/s. Usha Ramman

For R1, R3 to R5 : Mr.T.Murugamanickam, Senior Counsel
for M/s. Zeenath Begum

For R2 : Died

For R6 : Mr. V.P.K.Gowtham

ORDER

This Civil Revision Petition has been preferred as against the order dated 09.01.2020 made in I.A. No. 1512 of 2018 in I.A. No. 208 of 2004 in O.S. No. 16 of 2002 on the file of the III Additional District and Sessions Judge, Gobichettipalayam, wherein, the petitioner herein has filed petition to scrap the Commissioner's report with a direction to revisit the suit properties and to measure the same with proper documents and the same was dismissed.



2. The petitioner is the 1st defendant in the main suit and the main suit was filed for the relief of partition and separate possession. Already, the preliminary decree was passed. As per the preliminary decree, final decree petition was filed in I.A. 208 of 2004 and in the final decree petition, an Advocate Commissioner was appointed and already inspected the property and filed his report. The Commissioner's report is not in consonance with the preliminary decree and there are errors in the description of property and the measurement. The petitioner also filed objections for the Commissioner's report. Hence, the petitioner herein has filed petition to scrap the earlier Commissioner's report since there are some defects in the Commissioner's report and description of the properties. In fact, the Commissioner filed the report on 17.02.2006 and objections to the Commissioner's report filed by the petitioner and other respondents on 13.04.2006. Thereafter, this Court directed the Commissioner to revisit the property and to file his report, even after that, the Commissioner did not consider and ignore the objections filed by the petitioner and additional report was filed on 09.07.2007. The Commissioner filed reports and plans without perusing the description of the properties. Therefore, the petitioner herein has filed petition to scrap the report filed by the Commissioner.



3. According to the respondents, the case is pending from the year 2002 and the preliminary decree was passed in the year 2004 and thereafter, filed application for final decree and the same is pending from the year 2004. Already an Advocate Commissioner was appointed and filed his report. The objections also were filed by the respective parties for the Commissioner's report. When the matter is posted for passing final decree by the Trial Court, the petitioner filed this petition to scrap the Commissioner's report without any valid reasons. The report of Commissioner can be taken as guiding factor to arrive at just conclusion by this Court and it cannot be taken as conclusive proof. Therefore, the Trial Court has to pass final decree after considering the objections made by both the parties. The Trial Court also, after considering all this aspects, correctly dismissed the petition.

4. The learned counsel appearing for the petitioner would contend that the petitioner is the 1st defendant herein in the main suit and the 1st to 5th respondents herein have filed main suit for the relief of partition and separate possession and the preliminary decree was passed. Based on the preliminary decree, final decree petition was filed. In the final decree petition, the Commissioner was appointed and he inspected the property but he has not filed his report based on the features available in the suit properties and he



wrongly mentioned the description of the properties and the Commissioner also visited two times. In spite of the strong objections raised by the petitioner, he has not filed a real report. Therefore, the Commissioner's report has to be scrapped. The Trial Court, without considering the real dispute, erroneously dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

5. The learned counsel appearing for the respondents would contend that the suit was filed in the year 2002 and thereafter, the preliminary decree was passed. After passing the preliminary decree, they filed application for passing of final decree and an Advocate Commissioner was also appointed and the Advocate Commissioner filed his report. Thereafter, the parties have filed objections for the Commissioner's report. Once again, the Commissioner had revisited the properties and again he filed plans and reports. The case is pending from the year 2002 and now the Trial Court has to pass final decree. At this stage, the petitioner filed petition to scrap the Commissioner's report only to delay the proceedings. Therefore, the Trial Court has correctly dismissed the petition and the Trial Court can decide the case and pass final decree based on the Commissioner's report after considering the objections made by the parties. Therefore, the present Civil Revision Petition is liable to be dismissed.



6. This Court heard both sides and perused the materials available on record.

7. In this case, there is no dispute that already preliminary decree was passed and there is no challenge against the preliminary decree passed by the Trial Court. Before the Trial Court, final decree petition was filed and the Advocate Commissioner was appointed to divide the suit properties in terms of the preliminary decree. The Advocate Commissioner also inspected the properties in the presence of both the parties and also filed his report and plan. After filing of Commissioner's report and plan, both the parties have filed their objections and once again the Commissioner had revisited the properties and also filed his plan and report. Though, the petitioner has filed objections for the Commissioner's report, once again the petitioner filed this petition to scrap the entire Commissioner's report on the ground that the Commissioner's report does not contain the real facts of the case and the description of the properties.

8. It is an admitted fact that already, the objections were filed for the Commissioner's report and it is for the Trial Court to decide those objections and thereafter, the Trial Court has to pass final decree. If the Commissioner's report is scrapped in its entirety, once again the Commissioner has to revisit



the whole properties and it certainly will cause unnecessary delay. There is no valid reasons stated by the petitioner for scrapping the entire Commissioner's report. The Commissioner was appointed by the Court and he visited the suit properties in the presence of both the parties after due notice. While so, the Commissioner's report cannot be scrapped for flimsy reasons. There should be strong and valid reasons to scrap the Commissioner's report. In the case on hand, the reasons stated by the petitioner are not sufficient to scrap the Commissioner's report. Even if there are some errors in the Commissioner's report, the parties have already filed their objections for the Commissioner's report and those errors have to be decided by the Trial Court at the time of passing final decree. Therefore, the entire Commissioner's report cannot be scrapped and there are no grounds to scrap the Commissioner's report. Therefore, the Trial Court after careful consideration of the rival submissions and facts and circumstances of the case, correctly dismissed the petition. Therefore, the order passed by the Trial Court is proper and it does not warrant interference.

9. In view of the aforesaid discussions, this Court is of the opinion that this Civil Revision Petition has no merits and deserves to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently,



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the connected Miscellaneous Petition is closed.

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Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

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To

The III Additional District and Sessions Judge, Gobichettipalayam.



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P.DHANABAL, J.,

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