



C.R.P. No. 2877 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P. No. 2877 of 2013

1.Sivagananam (died)

2.Sridevi

3.Gananapriya

... Petitioners

[Petitioners 2 and 3 brought on record as Lrs of the deceased sole petitioner viz., Sivagananam vide order dated 18.08.2021]

Vs.

1.Bojarajan (died)

2.Baktavatasalam

3.Ashok Kumar

4.Rajalakshmi

... Respondents

[Respondents 2 to 4 brought on record as Lrs of the R1, Bojarajan as per order dated 01.10.2021]

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order of the learned Judge in I.A. No. 371 of 2012 in O.S. No. 906 of 2022 on the file of the II Additional Sub Judge, Erode dated 24.06.2013.



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For Petitioners : Mr. M. Sachin Vijay

For Respondents : Mr. D. Gopal, for R3
Mr. D. Sathya, for R4
for Ms. Zeenath Begum

ORDER

The present Civil Revision Petition has been filed against the order dated 24.06.2014 in I.A. No. 371 of 2012 in O.S. No. 906 of 2002 on the file of the II Additional Sub Court, Erode District.

2. The first petitioner is the plaintiff and respondents are the defendants in the suit in O.S. No. 906 of 2002 filed for partition and for separate possession. The said suit has been allowed and decreed on 29.08.2005. A petition has been filed for passing a final decree. In the preliminary decree, Advocate Commissioner was appointed to effect the partition of the suit schedule property. The Advocate Commissioner filed his report and sketch. The respondents submitted their objections to the report of the Advocate Commissioner. The objections raised against the Commissioner's report is that the suit schedule property is a small building and it could not be divided into three shares. The suit property is having



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high value. The parties do not accept to forego the extent with regard to the passage. Further, the suit property is old and it has to be reconstructed, as per the report of the Advocate Commissioner. In the event of partitioning the suit property, sharers to the property will not be in a position to utilize the same. Under these circumstances, the petitioners filed this petition seeking to sell the property in a public auction.

3. Having considered the submissions advanced by both side, the trial Court dismissed the petition by its order dated 24.06.2013.

4. Learned counsel for the petitioners submit that in the event of forming common passage as per the sketch prepared and submitted in the report of the Advocate Commissioner, it will be unnecessary to the sharers. Hence, it is appropriate and reasonable to sell the suit property in public auction and the sale proceeds to be divided among the sharers which is beneficial to all.



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5. On the other hand, the learned counsel appearing for the respondents submit that the suit property situated in thickly populated and located in the commercial area and in the event of dividing this property, no property could be secured in this area, as the suit property will fetch high value. Therefore, she submits that it is just and necessary to divide the property by metes and bounds. By dividing the property into three shares with 405 square feet of common passage as per the sketch prepared by the Advocate Commissioner, it will not be useful for any shareholders. Learned counsel also submits that for one shareholder, there is a way to reach the main road and as such, usage of passage is not required for him. In view of all these aspects, the learned counsel sought to dismiss the civil revision petition.

6. Having considered the submissions of the learned counsel and on careful perusal of the order passed by the trial Court, it appears that both parties having objections with regard to the Advocate Commissioner's report and sketch. There is substantial force in the contention of the



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respective counsel that if 473 square feet of land which was earmarked for the common passage in the sketch prepared by the Advocate Commissioner, it will not be useful for any shareholders. Under these circumstances, the trial Court came to an opinion that the parties can seek for re-appointment of Advocate Commissioner to divide the suit property as per their convenience and dismissed the petition.

7. Admittedly, the suit property is located at the commercial area of Erode and its value is being high, there is substantial force in the contention of the learned counsel for the respondents in their objection for the Advocate Commissioner's report and its sketch.

8. Considering the facts and circumstances of the case, in the considered opinion of this Court, the issue can be resolved by appointing Advocate Commissioner afresh in order to divide the suit property as per the convenience of the sharers instead of selling that property at this stage. As such, in our view, there is no infirmity or illegality in the order passed by the Court below and interference of this Court is not required.



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9. The parties can approach the trial Court seeking for appointment of Advocate Commissioner afresh to divide the suit property as per their convenience, in the interest of justice.

10. Accordingly, the Civil Revision Petition is dismissed.

11. There shall be no order as to costs.

29.07.2024

Index : Yes / No

Neutral Citation : Yes / No

AT

To

The II Additional Sub Judge, Erode.



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