



CRP No.1625 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.1625 of 2023

1.Saraswathi

2.Banumathi

3.Rajababu

... Petitioners

Vs.

1.Chinnappa Naidu

2.Chandran Naidu

Srinivasalu Naidu (Died)

Muthu Krishna Naidu (Died)

Ellappa Naidu (Died)

Dhanapal (Died)

3.Margabhandhu Chowdri

4.Mrs.Jothiammal

5.Prabavathi

Adhiammal (Died)

6.Boopalan

7.Kamala

8.Kasthuri

9.Lakshmi

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10.Mrs.Lakshmiammal

11.Revathi

12.Sathyanantham

13.Ganesan

14.Gnanambal

15.Sujatha

16.Sumathi

17.Naveenkumar

18.Subashree

19.Vikram

20.L.Rama Naidu

21.C.Thilaga

22.D.Kalavathi

23.P.Rohini

24.L.R.Prakash

25.Suriyababu

26.Santhakumari

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the learned Subordinate Judge, Gudiyatham in IA No.2 of 2022 in IA No.70 of 1999 in OS No.4 of 1999 dated 13.03.2023 and allow the civil revision petition.



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For Petitioners : Mr.J.Shanmugasundra Babu

For Respondents : Mr.V.Ayyadurai,
Senior Counsel
for Mr.V.B.Perumal Raj
for respondents 1, 2, 4, 5, 7 to 19, 20 to 24
Respondents 3, 6, 25 and 26 -Notice served
- No appearance

ORDER

The civil revision petition is filed to set aside the fair and decreetal order passed by the learned Subordinate Judge, Gudiyatham in IA No.2 of 2022 in IA No.70 of 1999 in OS No.4 of 1999 dated 13.03.2023 and allow the civil revision petition.

2. The second respondent along with his brother have filed an original suit in OS No.861 of 1979 for partition and separate possession on the file of the learned Subordinate Judge, Vellore, The said suit was decreed on 22.03.1982 and preliminary decree was passed. Thereafter, an application in IA.No.633 of 1993 was filed by the first respondent herein for passing a



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final decree of the plaint schedule properties. Subsequently, the said original suit and application were transferred to the learned Sub Court, Gudiyatham and re-umbered as OS No.4 of 1999 and IA No.70 of 1999. In the said application, an advocate commissioner was appointed and he had filed a report in the year 1999. Subsequently, the Trial Court, by order dated 09.11.2006, appointed an advocate commissioner to conduct auction for the sale of Item Nos.7, 13 and 15 of the plaint schedule properties. Challenging the said order, the husband of the first petitioner and the father of the petitioners 2 and 3 had filed a civil revision petition in CRP No.1673 of 2007. The said CRP was dismissed on 15.11.2017 by granting liberty to the father of petitioners 2 and 3 to file appropriate application for getting item No.13 of the suit schedule property. Pursuant to the said order, he filed an application in IA No.31 of 2018 before the Trial Court seeking to allot Item No.13 of the suit property. Pending the said application, the father of the petitioners 2 and 3 died. Hence, the petitioners were impleaded in IA No.31 of 2018 as legal heirs.



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3. The grievance of the petitioners is that in item Nos.13 and 14 of the plaint schedule property, the father of the petitioners 2 and 3 had a constructed a house and he was in possession for more than 60 years and he had also agreed to pay the difference in prices to other shares. However, the earlier advocate commissioner has not identified and valued the house property situated in Item Nos.13 and 14 of the plaint schedule property and he has identified only the land and filed a report. Therefore, the petitioners have filed the instant application in IA No.2 of 2022 for appointment of another advocate commissioner to note down the physical features of Item Nos.13 and 14 of the plaint schedule property and measure the same. The trial court, on 13.03.2023 had dismissed the said application, on the ground that a report of advocate commissioner was already available. Challenging the said order, the petitioners have filed the present civil revision petition.

4. Learned counsel for the petitioners submitted that the properties left out in item Nos.13 and 14 of the plaint schedule property have to be noted and should be valued by an advocate commission for passing final



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decree. Therefore, the order of the trial court is liable to be set aside.

5. Learned counsel for the respondents submitted that property situated at Item Nos.13 and 14 of the plaint schedule property has already been noted and valued by the advocate commissioner and a report had been filed. He further submits that if the said items had not been noted and valued by the advocate commissioner in the earlier report, there is no objection for the respondents to re-issue warrant to the same advocate commissioner to note down the physical features of the properties and buildings situated at Item Nos.13 and 14 of plaint schedule property and value the same.

6. Heard the parties and perused the materials available on record.

7. Recording the submissions made by the learned counsel for the parties, this civil revision petition is closed with liberty to the petitioners to file an application seeking re-issuance of warrant to the earlier advocate



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commissioner to note down the physical features of the property situated at Item Nos.13 and 14 of the plaint schedule properties and value the same. The Trial court is also directed to verify as to whether in the earlier advocate commissioner's report, the advocate commissioner has noted and valued the properties situated at Item Nos.13 and 14 of the plaint schedule property. If the advocate commissioner has not done the said task, the Trail Court shall decide the application filed by the petitioners, to re-issue warrant to the advocate commissioner for this above purpose on merit. There will be no order as to costs. Consequently, CMP No.10594 of 2023 is closed.

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Index: Yes/No

Internet: Yes/No

mrn

Note: Issue order copy by 12.02.2024



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To
The Subordinate Judge, Gudiyatham



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V.SIVAGNANAM, J.

(mrn)

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