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C.R.P.(PD).No.2196 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2196 of 2020

1.C.Multanamal Mutha (died)

2.Muni Devi

3.M.Gyan Chand

4.N.Aruna Kumari

5.M.Sunil Kumar

(petitioners 3 to 5 brought on record as LRS of the deceased

P-1 viz., C.Multammal Mutha vide Court order dated 08.09.2022

made in CMP.No.13998 of 2022 in CRP.No.2196 of 2020 by RHJ)

... Petitioners

vs.

1.D.Vijayalakshmi

2.D.Rekha

3.Delli Bai alias Mahalakshmi Ammal

(petitioners 3 to 5 brought on record as Lrs of the deceased P-1 viz.,

C.Multanamal Mutha vide Court order dated 08.09.2022 made in

CMP.No.13998 of 2022 in CRP.No2196 of 2020 by RHJ)

4.Goverdhan

5.Sridharan

6.Murali

7.Narasimhan

8.Deenadayalan

9.Nirmala Devi

... Respondents



C.R.P.(PD).No.2196 of 2020

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 02.03.2020 passed in I.A.No.5009 of 2017 in I.A.No.10182 of 2018 in O.S.No.2183 of 2007 on the file of the XVIII Assistant City Civil Court, Chennai and allow the said petition;

(ii) Direct the respondents to pay the costs of the revision petition.

For Petitioners	: G.Kalyan Jhabakh for M/s.Surana and Surana
For Respondents	:M/s.D.Madhusudanan for R1 No appearance for R2 to R9

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the amendment application filed by the petitioner seeking to amend I.A.No.10182 of 2018.

2. The respondents 1 and 2 filed a suit for partition and obtained a preliminary decree for partition. The respondents 1 and 2 also filed I.A.No.1 of 2019 seeking permission of the Court to purchase the property as the Advocate Commissioner filed a report that the suit property is



C.R.P.(PD).No.2196 of 2020

indivisible.

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3. The petitioner herein also filed I.A.No.10182 of 2017 seeking direction to respondents 1 and 2 to sell their 1/9th share each to the property. Since in the prayer portion, there is no mention about the person to whom it should be sold the petitioner herein filed I.A.No.5009 of 2018 seeking to amend the prayer in I.A.No.10182 of 2019 so as to direct the respondents 1 and 2 to sell their property in favour of petitioners/D8 and D9.

4. The said application for amendment was dismissed by the Court below by observing that when both the petitioners and respondents 1 and 2 filed applications for purchasing the property concerned, the proper course would be to go for public auction. The present application is filed by the revision petitioner in I.A.No.5009 of 2018 seeking amendment of I.A.No.10182 of 2017. Whether I.A.No.10182 of 2017 should be allowed or party should be directed to participate in the public auction are all matters to be decided on merits. While considering the petition for amendment, the Court below ought not to have travelled beyond that and passed orders on merits as if it was disposing of in I.A.No.10182 of 2017. Therefore, the



C.R.P.(PD).No.2196 of 2020

impugned order is liable to be set aside.

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5. The petition for amendment filed by the petitioners is only clarificatory in nature. They want to clarify the prayer in I.A.No.10182 of 2017 by making it clear that properties should be sold by R1 and R2 to petitioners/ D8 and D9. It is settled law the amendments which are clarificatory in nature shall be liberally considered and allowed. Therefore, there is no impediment for the Court to allow the I.A for amendment filed by the petitioners in I.A.No.5009 of 2018. Accordingly, the Civil Revision Petition is allowed by setting aside the impugned order and the amendment sought for in I.A.No.5009 of 2018 is allowed. The petitioners are permitted to amend the prayer in I.A.No.10182 of 2017 as prayed for.

6. The learned counsel appearing for the respondents vehemently contended that the petitioners are dragging on the proceedings by filing petition after petition. In view of the same, a direction is issued to the Court below to dispose of I.A.No.10182 of 2017 and the petition filed by the respondents 1 and 2 in I.A.No.1 of 2019 within a period of six weeks from the date of receipt of a copy of this order.



C.R.P.(PD).No.2196 of 2020

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7. It is made clear, the Court below to dispose of both the I.As without being influenced by anything said in the impugned order.

8. The learned counsel appearing for the petitioner further submitted that during pendency of the Civil Revision Petition, the second respondent sold her share in favour of the petitioners. It is open to the parties to file a memo appropriate before the Court and workout their remedies.

9. Accordingly, this Civil Revision Petition is allowed. No costs.

08.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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C.R.P.(PD).No.2196 of 2020

S.SOUNTHAR, J.

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To

The XVIII Assistant City Civil Court,
Chennai.

C.R.P.(PD).No.2196 of 2020

08.01.2024

6/6