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C.R.P. No. 3141 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No. 3141 of 2024

&

C.M.P. No. 16757 of 2024

A.M. Raju Joseph

..Petitioner

Vs.

1. Mrs. Rosy Babu
2. Mrs. Mary Josephin
3. Mr. Peter Xavier

..Respondents

Prayer: Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decretal order dated 12.07.2024 made in I.A. No. 4 of 2014 in O.S. No. 53 of 2016 by the III Additional District and Sessions Court, Tiruvallur.

For Petitioner :: Mr.N. Rajkumar

O R D E R



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Original Suit in O.S. No. 53 of 2016 is a suit for partition. It was presented by the sisters of the 1st defendant/revision petitioner herein.

2. According to the plaintiffs in O.S. No. 53 of 2016/sisters of the revision petitioner herein, the suit property belongs to A.J. Mathew, their father. There is no dispute in the relationship between the parties. The plaintiffs would plead that as their father A.J. Mathew, who purchased the property on 10.11.1997 died intestate on 15.07.2005, they have a share in the property.

3. Denying the claim that the plaintiffs have a share in the suit property, the 1st defendant/revision petitioner herein filed a detailed written statement. One of his pleas is that he was working in the Gulf Countries and he had sent money for the purchase of the property. Though the property stands in the name of his father, the property belongs to him.

4. On the basis of the above pleadings, issues were framed and



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examination of witnesses on the side of the plaintiffs was completed.

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5. When the matter was posted for examination of the 1st defendant, he came out with an application in I.A. No. 4 of 2024 for appointment of an Advocate Commissioner. According to the 1st defendant, the building that is put up in the suit property measures around 1250 sq.ft and not 750 sq.ft as stated by the plaintiffs. He would therefore plead that an Advocate Commissioner has to be appointed to measure the suit property.

6. The learned Trial Judge received counter from the plaintiffs, who *inter alia* pleaded that there is no necessity for appointment of an Advocate Commissioner at this stage. The learned Trial Judge agreed with the plaintiffs and dismissed the said I.A. as against which the present revision has been filed.

7. Heard Mr.N. Rajkumar, learned counsel for the civil revision petitioner.

8. Mr.N. Rajkumar would contend that the extent of the



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superstructure constructed in the suit property is around 1250 sq.ft and not 750 sq.ft. as pleaded by the plaintiffs. He would state that if an Advocate Commissioner is appointed, the extent of the property will become known to the Court.

9. I have considered the arguments of Mr.N. Rajkumar.

10. The suit is still at a stage prior to passing of a preliminary decree. At this stage, all that the Court does is declare the share of the plaintiffs if they possess any and if the suit schedule mentioned property should be partitioned. At this stage, measurement of the property is neither germane nor necessary. It is the 1st defendant's plea that the extent of the building put up in the suit property is 1250 sq.ft. He would also plead that he had put up the construction. The 1st defendant cannot use the office of an Advocate Commissioner for the purpose of procuring evidence to prove his case. It is always open to the 1st defendant to let in evidence independently to prove that he had put up construction to the extent as pleaded by him. Furthermore, in a suit for partition, an Advocate Commissioner will have to



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be appointed anyway at the time of final decree to measure the property. At the stage of preliminary decree, such appointment, unless and until there is a dispute with regard to the identity of the property, is absolutely unwarranted. I do not find any reason to take a different view than the one taken by the learned Additional District and Sessions Judge, Tiruvallur at Poonamallee. Therefore, the civil revision petition stands dismissed. No costs. Connected C.M.P. is closed.

07.08.2024

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To
The Additional District and Sessions Court,
Tiruvallur at Poonamallee.

V. LAKSHMINARAYANAN,J.



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