



C.R.P.(PD).No.4523 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4523 of 2024 and
CMP.No.25226 of 2024

1.Palanathal
2.Andathal
3.Bagiyammal
4.Parvathy
5.Valliammal (died)

... Petitioners

Versus

1.Kandasamy Gounder,
2.Rangasamy Gounder
3.Ramathal.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to allow this civil revision petition by setting aside the order passed in I.A.No.2 of 2023 in I.A.No.529 of 2011 in O.S.No.9 of 2009 on the file of IV Additional District Court at Coimbatore.

For Petitioner : Mr.S.Muralidharan
for Mr.S.Saravanan

For Respondents : Mr.G.Govarthanam (R1 and R2)



C.R.P.(PD).No.4523 of 2024

WEB COPY

ORDER

This civil revision petition challenges the order of the learned IV Additional District Judge dated 21.08.2024 in I.A.No.2 of 2023 in I.A.No.529 of 2011 in O.S.No.9 of 2009.

2. The civil revision petitioners are the plaintiffs in the suit. O.S.No.9 of 2009 is a suit for partition and separate possession. The suit came to be decreed on 14.06.2011. Challenging the same, an appeal had been preferred in A.S.460 of 2011 to the file of this Court. This Court, by considering the amendment to Section 23 of the Hindu Succession Act, 1956, allowed the appeal with respect to 'B' schedule property and confirmed the order in other aspects. A Special Leave Petition was preferred before the Supreme Court in SLP (Civil) Diary No.9092 of 2024. This came to be dismissed on 08.04.2024.

3. In the meantime, the plaintiff had filed had an application for passing of final decree in I.A.No.529 of 2011. An Advocate Commissioner



C.R.P.(PD).No.4523 of 2024

was also appointed and he submitted a report on 01.04.2013. The defendants 1 and 2 being unsatisfied with the report, filed an application to scrap the Advocate Commissioner's report and appoint another Advocate Commissioner. This application was received as I.A.No.1 of 2023. The learned Judge dismissed the application to scrap the report on 07.11.2022, holding that such an application to scrap the report is not maintainable when no objections have been filed to the Advocate Commissioner's report by the defendants. This order has not been challenged and had attained finality.

4. Subsequently, the defendants 1 and 2 filed their objections to the Advocate Commissioner's report. There is nothing on record to show that the report submitted by the learned Advocate Commissioner has been scraped by the learned trial Judge. Thereafter, the defendants 1 and 2 filed an application in I.A.No.2 of 2023, to appoint another Advocate Commissioner to visit the suit schedule mentioned property and to measure the same with the help of Taluk Surveyor and to file a report.



C.R.P.(PD).No.4523 of 2024

WEB COPY

5. The learned Judge issued notice to the plaintiff and received a counter. Thereafter, after hearing the arguments, allowed the application. Hence, this civil revision petition at the instance of the plaintiffs.

6. I heard Mr.S.Muralidaran, for the civil revision petitioner and Mr.G.Govarthanan for the contesting respondents.

7. It is the plea of the civil revision petitioner that an application to appoint a fresh Advocate Commissioner to redo the exercise is not maintainable, when the report has not been scraped, and when the attempt to scrap the report earlier has ended in failure.

8. Per contra, Mr.Govarthanan, pleads that the Advocate Commissioner has not measured the pathway situated in Survey No.133/2A and 133/2B connecting the property in Survey Nos.127 and 126 and 110. Hence, he states that the defendants were dissatisfied with the Advocate



C.R.P.(PD).No.4523 of 2024

Commissioner's report. He adds that the learned Judge has rightly allowed the application. Hence, he pleads that the revision does not deserve any consideration.

9.I have carefully considered the submission of both sides and perused the records.

10. When the report of the Advocate Commissioner is on record and it has not been set aside by the Court, a fresh Advocate Commissioner to redo the same exercise does not arise. In a final decree proceedings, if there are two sets of Advocate Commissioner's report, stating two modes of division, it will only result in utter confusion. The purpose of appointing Advocate Commissioner in the final decree application is to suggest a mode of division. When a suggestion been made by the Advocate Commissioner through his report dated 07.11.2022, the defendants are certainly entitled to object to the mode of division.



11. Mr.Govarthanan, states that he also filed an objection. The learned District Judge, prior to the appointing a fresh Advocate Commissioner should have come to a conclusion that the objections that have been filed by the defendants are tenable and he should have scrapped the report submitted by the Commissioner. He cannot uphold the report and again seek for another Advocate Commissioner to submit a fresh report.

12. Though Mr.Govarthanan argues that the learned Judge has come to a conclusion that the report of the Commissioner is unsatisfactory, I do not find anywhere a finding to that effect. The report of the Advocate Commissioner has been placed before me. I have gone through the same and the report at page no.3 shows the the Advocate Commissioner had in fact measured the pathway to which the defendants are raising a issue.

13. If the objections of the defendants is tenable, it is for the Court to first pass an order considering the report and the objections and not allow the application for a fresh Commissioner. As already pointed out, there



C.R.P.(PD).No.4523 of 2024

cannot be two sets of Advocate Commissioner's report. *Sine qua non*, for appointing the second Advocate Commissioner, is that the report of the first Advocate Commissioner's should be set aside. That have not been done in the present case, the revision deserves to be allowed.

14. Accordingly, this civil revision petition is allowed. The order passed by the learned IV Additional District Court at Coimbatore dated 21.08.2008 in I.A.No.2 of 2023 in I.A.No.529 of 2011 in O.S.No.9 of 2009 is set aside.

15. The learned Trial Judge shall peruse report of the Commissioner as well as the objections. He shall hear the submissions of both sides and thereafter take a call whether the report can stay on file or scrapped. The learned Trial Judge shall complete the said exercise, within a period of ***eight weeks*** from the date of receipt of a copy of this order.



WEB COPY



C.R.P.(PD).No.4523 of 2024

V.LAKSHMINARAYANAN, J.

arr

With the above directions, this civil revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2024

arr

Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

To

The IV Additional District Court,
Coimbatore.

C.R.P.(PD).No.4523 of 2024



WEB COPY



C.R.P.(PD).No.4523 of 2024