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CRP.No.4833 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.4833 of 2024
and CMP.No.26984 of 2024

1.S.Sumathi
2.Minor Velmurugan
3.Minor Harini

.. Petitioners

Versus

1. K.Pattu Durai Nadar
K.Badrakali (Deceased)
K.Sriramajeyam (Deceased)

2.The Joint Sub Registrar – I
South Madras Office at Saidapet
Chennai – 600 015

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, to set aside all the proceedings/order dated 30.09.2024 in I.A.No.13 of 2021 in O.S.No.660 of 2006 by the learned Additional District Munsif, Alandur.

For Petitioner : Mr.M.Antorny Jesurajan

For Respondents : Mr.M.Thangadurai for R1

Mr.D.Gopal for R4



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ORDER

Challenge has been made to the order appointing advocate commissioner to divide the suit properties into two portion and file a report in pursuant to the preliminary decree passed in O.S.No.660 of 2006, the present revision has been filed.

2. The suit has been filed for declaration and partition. The property is originally owned by one Badrakali, mother of the plaintiff and the second defendant in the suit. During her lifetime, the first defendant has executed a settlement deed in favour of the first plaintiff and the second defendant on 20.07.1987. Thereafter, it appears that after cancelling the said settlement deed, another settlement deed has been executed in favour of one of the sons of the second defendant which has been challenged in the suit to declare that cancellation as not valid and for partition. Preliminary decree has been passed on 06.11.2019. Now, the respondent has initiated final decree proceedings. In the final decree proceedings, the impugned order has been passed appointing the advocate commissioner, which was opposed mainly on the ground that as against the preliminary decree,



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appeal has been filed in A.S.No.125 of 2021. However, the Trial Court had appointed advocate commissioner to divide the suit properties vide the impugned order. Challenging the same, the present revision

3. The learned counsel for the petitioner mainly submit that as against the preliminary decree, appeal is filed and the same is pending. Therefore, at this stage, appointing the advocate commissioner is not necessary. The Order of the Trial Court is not correct. Hence, seeks to allow this revision.

4. Heard the learned counsel for the petitioner and perused the materials placed on record.

5. At the outset, this Court is of the view that the very revision is not maintainable for the simple reason that mere pendency of the appeal, the same will not operate as stay of the decree and judgment or any proceedings initiated pursuant to the decree and judgment as per Order XLI Rule 5 of CPC. Now it is brought to the notice of this Court, commissioner has also filed a report after dividing the property and division is also effected by the petitioners with the consent of the parties. Though the



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revision petitioners would submit that the petitioners have not given such consent, the advocate commissioner appointed by the Court has given a report that there was a consent for allotment of particular portion. In the event, the revision petitioners dispute the same, they have to examine the advocate commissioner and disprove the statement. Therefore, at this stage, mere pendency of the appeal will not bar the advocate commissioner in performing the directions of the Court. Hence, I do not find any merits in the revision

6. Accordingly, this revision stands dismissed. Passing of final decree may be deferred till the disposal of the appeal in A.S.No.125 of 2021. The Sub-Court, Alandur is directed to dispose of the above appeal within a period of two months from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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N.SATHISH KUMAR, J.,

dhk

To,

1.The Additional District Munsif
Alandur

2.The Subordinate Judge
Sub Court, Alandur

C.R.P.No.4833 of 2024

27.11.2024