



C.R.P.No.4904 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 16.12.2024

CORAM :

**THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.No.4904 of 2024 &  
CMP.No.27518 of 2024

1.Muthusamy  
2.Mini

.. Petitioners

**Versus**

1.Sampoornam @ Karuppayee  
2.Senthilkumar

.. Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India to fair and decreetal order dated 25.09.2024 made in I.A.No.7 of 2023 in O.S.No.156 of 2021 on the file of the Principal District Court at Namakkal.

For Petitioners : Mr.T.L.Thirumalaisamy

For Respondent 1 : Mr.R.Rajesh

**ORDER**

This civil revision petition arises against the order of the learned Principal District Judge, Namakkal in I.A.No.7 of 2023 in O.S.No.156 of 2021 dated 25.09.2024.



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2. The civil revision petitioners are the defendants 1 and 2 in the suit.

The first petitioner is the husband of the second petitioner. The second respondent, who is the third defendant, is the purchaser of the property.

3. The first respondent is the plaintiff. She pleaded that the settlement deed executed by the first defendant in favour of the second defendant is null and void and to declare the sale deed executed by the second defendant in favour of the third defendant is equally null and void. She sought for division of the property into two equal parts and to allot one share to her, by way of a preliminary decree.

4. A written statement was presented contesting the claim of the plaintiff. Issues were framed and the parties were pushed for trial.

5. At that stage, the defendants 1 and 2 filed an application for appointment of an Advocate Commissioner to note down the improvements that the first defendant had made over the property, after having succeeded through his mother.



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6. This was resisted by the plaintiff stating that it was an attempt to drag on the proceedings. She pleaded the question of appointment of an Advocate Commissioner to note down the improvements done, in and over the suit property, is not maintainable. The second respondent also filed a counter opposing the same.

7. The learned Trial Judge came to a conclusion that the application is not maintainable as no grounds had been made out for appointment of Advocate Commissioner. Aggrieved by the same, the present civil revision petition.

8. I have heard Mr.T.L.Thirumalaisamy for the civil revision petitioners and Mr.R.Rajesh for the contesting first respondent. I have gone through the records.

9. The purpose of appointment of an Advocate Commissioner is to elucidate the matter in issue and to assist the Court in rendering a just conclusion in the suit. At the stage of preliminary decree, the issue that arises is, whether the plaintiff is entitled to a share in the property. At that stage, the improvements or otherwise made by the defendants over the property is irrelevant.



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10. If the plaintiff has the share, the court is going to decree the suit.

If the plaintiff does not have a share, the court is going to dismiss the suit. If the suit is decreed and the defendants have, in fact, made any improvement over the property, then they are entitled to claim allotment invoking equity at the time of final decree. At that stage, the court will appoint an Advocate Commissioner for the purpose of suggesting the mode of division. The defendants can always point out the improvements made by them to the advocate commissioner, plead equity and seek for allotment of those portions to them. At the stage of preliminary decree, the question of appointment of Advocate Commissioner does not arise.

11. In the light of the above discussion, I do not find any reason to take a different view from the view taken by the learned Principal District Judge, Namakkal in I.A.No.7 of 2023 in O.S.No.156 of 2021 dated 25.09.2024. This civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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nl  
Index : yes/no



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Speaking order/Non-speaking order  
Neutral Citation : yes/no

To

The Principal District Court at Namakkal.



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**V.LAKSHMINARAYANAN, J.**

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