



C.R.P.(PD)(MD).No.1252 of 2019

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DATED: 20.06.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No1252 of 2019

and CMP(MD).No.6947 of 2019

Ambrose (died)

...Petitioner/Petitioner

2.C.Saratha

3.A.Jenitha

4.A.Jain Kumar

5.A.Venitha

(Petitioners 2 to 5 are brought on record as
legal heirs of the deceased sole petitioner vide
Court order dated 04.06.2024)

Vs

1.Vijayakumari

2.Saroja

...Respondents 1 & 2/
Respondents 1 & 2

3.Paulraj

4.Sarawathi

...Respondents 3 & 4/
Respondents 3 & 4



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PRAYER: Civil Revision Case is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 04.01.2019 passed in I.A.No.169 of 2018 in O.S.No.70 of 2006 on the file of the II Additional District Munsif, Kuzhithurai.

For Petitioners : Mr.M.P.Senthil
For R1, R2 & R4 : Mr.S.Sivakumar
For R3 : No appearance

ORDER

The present revision petition has been filed by the second defendant in O.S.No.70 of 2006 on the file of the Kuzhithurai.

2.The respondents 1 and 2 herein as plaintiffs had filed the above said suit for the relief of partition and separate possession. A preliminary decree was passed on 08.07.2010. According to the revision petitioner, he had purchased the property even prior to the suit from the first defendant on 19.02.2002. Hence, he had filed I.A.No.74 of 2017 for passing a supplementary preliminary decree in his favour. The said application was allowed and the supplementary preliminary decree came to be passed on 26.07.2018.

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3.Before passing of the supplementary preliminary decree in the final decree proceedings in I.A.No.168 of 2016, the Advocate Commissioner has submitted his report on 17.06.2017. On the basis of the supplementary preliminary decree, the second defendant had filed I.A.No.169 of 2018 for issuance of warrant to the same Advocate Commissioner so as to demarcate his share in the property. This application was allowed by the trial Court on 04.01.2019. At the time of allowing the application, this Court had directed the Advocate Commissioner to allot share to the revision petitioner without disturbing the earlier allotment made in favour of the plaintiffs in his earlier report and plan. This observation of the trial Court is under challenge in the present civil revision petition.

4.According to the learned counsel appearing for the revision petitioner, this observation of the trial Court will affect his rights. It is for the Commissioner to workout the plan and prepare a report in accordance with plan. Therefore, he prayed for deletion of this observation made by the trial Court at the time of issuance of warrant to the Advocate Commissioner.



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5.The learned counsel appearing for the respondents/plaintiffs had contended that the defendants are parties to the final decree proceedings and they were also present at the time of inspecting the suit schedule property for the purpose of preparing the plan and report. In such circumstances, the observations made by the trial Court are legally sustainable. Hence, he prayed for sustaining the order passed by the trial Court.

6.I have considered the submissions made on either side and perused the material records.

7.When the Advocate Commissioner had inspected the suit schedule property in the final decree proceedings, the second defendant was not allotted any share. Therefore, he did not have any right either to file a memo of instruction or to raise any objection to the Commissioner's report. Only after the report was filed by the Advocate Commissioner, a supplementary preliminary decree came to be passed in favour of the second defendant. Therefore, in such circumstances, mere presence of the defendants in the array of parties in the final decree proceedings or during the Commissioner's visit will not in any way be helpful to the second defendant.



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8.The Advocate Commissioner should be granted liberty to prepare a plan and file a report as per the physical features of the property. When a new sharer has been introduced, certainly the allotment of shares are likely to get disturbed. It is for the Advocate Commissioner to decide whether to retain the earlier allotment made in favour of the plaintiffs or to disturb the said allotment. Therefore, such an observation made by the trial Court would certainly affect the rights of the revision petitioners herein.

9.In view of the above said facts, the observations made by the trial Court that the Advocate Commissioner should allot share in favour of the petitioner without disturbing the earlier allotment made in favour of the plaintiffs in the earlier report and plan is hereby deleted. However, the observations made by this Court would not mean that the Advocate Commissioner has to necessary disturb the allotment made already. The Advocate Commissioner is at liberty to decide the allotment of the revision petitioners as well as the plaintiffs depending upon the facts and circumstances and the physical features of the property.



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10. With the above said observations, this Civil Revision Petition stands allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The II Additional District Munsif,
Kuzhithurai

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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