



C.R.P.(MD).No.1168 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.1168 of 2019

A.John Bi

... Petitioner/Respondent/
Plaintiff

-VS-

Ayisha Bi (died)

1. Anwar Sheriff
2. Sulthan Sheriff
3. Ibrahim Sheriff
4. Basheer Sheriff
5. Dawood Sheriff
6. Shamim

... Respondents/Petitioners/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and executable order in I.A.No.817 of 2017 in I.A.No.153 of 2005 in O.S.No.91 of 1997, dated 13.11.2018 on the file of the Principal District Munsif Court, Tiruchirapalli.

For Petitioner : Mr.Haja Mohideedn

For Respondents :Mr.R.Paranjothi
for R1, R4 and R5



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ORDER

The present Civil Revision Petition has been filed by the petitioner in the final decree proceedings/plaintiff challenging the order passed by the trial Court, wherein, the trial Court had allowed I.A.No.817 of 2017 and permitted the respondent in the final decree proceedings to file objections to the Commissioner's Report.

2. The revision petitioner herein as plaintiff had filed a suit in O.S.No. 91 of 1997 for partition and separate possession. The suit was decreed *ex parte* on 17.09.2004. The plaintiff had filed I.A.No.153 of 2005 for passing of final decree. In the said application, an Advocate Commissioner was appointed to file a report with regard to the manner of division of properties. The Advocate Commissioner has submitted a report and plan on 14.11.2013.

3. The respondent's in the final decree proceedings had filed I.A.No. 817 of 2017 requesting the permission of the Court for filing objections to the Commissioner's Report and not only sought permission of the Court to record their objections but also to scrap the Commissioner's report and to issue a fresh warrant to the Advocate Commissioner. The revision petitioner herein



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has filed a detailed counter pointing out that the Commissioner's Report has been filed in the year 2013 and the present application has been filed after a delay of 4 years. However, the trial Court after considering the submissions made on either side had proceeded to allow the said application. A perusal of the order passed by the trial Court does not indicate that the Commissioner's Report has been scraped or any warrant has been reissued to the said Commissioner. The trial Court has simply permitted the respondents to file their objections. Challenging the same, the present Revision Petition has been filed by the decree holder.

4. The learned counsel appearing for the respondents had contended that the Commissioner has not properly divided the properties and has not noted the public path way and drainage channel. Therefore, he contended that the report of the Advocate Commissioner has to be rejected and a fresh warrant has to be issued.

5. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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6. Though the respondents in the final decree proceedings have prayed for scrapping of the Commissioner's Report and for re-issuance of a fresh warrant to the Advocate Commissioner, the trial Court has not granted the relief. The trial Court has simply permitted the respondents in the final decree proceedings to submit that objections. Therefore, the decree holder cannot have any grievance over the above said order. It is needless to point out that the report of the Advocate Commissioner has to be considered by the final decree Court, in the light of the objections raised by the respondents in the revision petition. However, the respondents in the revision petition have not made out any case either for scrapping of report or issuance of fresh warrant to the Advocate Commissioner.

7. With the above said clarification, this Civil Revision Petition is disposed of. Considering the fact that the final decree application is pending for the past 19 years, this Court directs the trial Court to dispose of the final decree proceedings on or before **31.08.2024**. There shall be no order as to costs.

01.04.2024

NCC : Yes/No



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Index : Yes / No
Internet : Yes / No
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To
1. The Principal District Munsif Court,
Tiruchirapalli.



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R.VIJAYAKUMAR,J.

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