



C.R.P(MD).No.1747 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 21.02.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.1747 of 2014

and

M.P.(MD).No.2 of 2014

Mandothari,
W/o.A.Senthilkumar,
Through her Power Agent
R.K.Ramachandran

(R.K.Ramachandran is Recognized as the power agent of the sole petitioner vide order dated 31.07.2014 made in M.P.(MD).No. 1/2014 in C.R.P(MD).SR.No.31175/2014)

... Petitioner

Vs.

1. R.Nagarajan
2. N.Ponnarasi
3. N.Mekala
- Baluchamy Pillai (died)
- Krishnamoorthy (died)
6. Gopal
7. Kalavathy
8. B.Rathinam

1/8



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9. B.Selvam

10. B.Saravanan

11. B.Manikandan

12. B.Raman

13. Jayalakshmi

14. Panchu @ Geethanjali

(Respondents 8 to 14 are brought on record as LRS of the deceased 4th Respondent vide Court order dated 14.12.2021 made in M.P(MD).Nos. 1 to 3 of 2015 in C.R.P(MD).No.1747 of 2014)

15. K.Kavipriya

16. K.Janarthana Prabhu

17. K.Rajesh @ Kamatchi

(Respondents 15 to 17 are brought on record as LRS of the deceased 5th Respondent vide Court order dated 03.03.2023 made in CMP(MD).No.1146 of 2022 in C.R.P(MD).No.1747 of 2014)

... Respondents

Prayer : Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal order dated 17.02.2014 passed in I.A.No.438 of 2013 in O.S.No.927 of 2012 on the file of the Principal Sub-Court, Madurai by allowing this Civil Revision Petition.

For Petitioner : M/s.V.T.Harshini for Mr.D.Nallathambi

For Respondents : Mr.G.Mohan Kumar for R1 to R3

: Mr.K.Muthumalai for R7



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: R4 & R5 [died]

: No appearance for R8 to R14, R16 & R17

ORDER

The plaintiff is the revision petitioner and he has filed this petition challenging the impugned fair and decreetal order in LA.No.438 of 2013 made in O.S.No.927 of 2012, on the file of the Principal Sub-Court, Madurai, dated 17.02.2014, wherein, the petitioner requested to appoint Advocate Commissioner under Order 26 Rule (9) r/w 151 CP.C., which was dismissed by the learned trial Judge.

2.The plaintiff filed a suit in O.S.No.927 of 2012 seeking for partition of the suit scheduled property and also filed an I.A.No.864 of 2012 seeking interim injunction restraining the respondents Nos.4 to 7 from executing the decree dated 09.07.2002 in O.S.No. 1778 of 1993 on the file of the Additional District Munsif, Madurai Town. The defendants 4 to 7 filed the written statement denying the allegation made in the plaint and prayed to dismiss the suit. He also took a specific stand that the description of the property is not properly shown and the same did not correlate with the



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property mentioned in the partition deed. Hence, the petitioner filed the above application under Order 26 Rule (9) r/w 151 C.P.C., to appoint Advocate Commissioner to measure the property of the suit scheduled property in O.S.No.927 of 2012 and the same was dismissed. Aggrieved over the same, the present civil revision petition is filed. During the pendency of this petition, the respondents 4 and 5 died and their legal heirs were impleaded as parties to the proceedings. In this case, even though postal Tapal was returned for some of the respondents, the original defendants namely first defendant and 4 to 7 were represented before this Court. Hence, there is sufficient representation on behalf of the respondent to contest this case on merit. Hence, this Court inclines to dispose of the revision on hearing to the parties present before this Court.

3. The learned counsel appearing for the petitioner submitted that since the defendants raised dispute relating to the boundaries of the properties and also the valuation of the property made in the partition deed, he filed a petition for appointing Advocate Commissioner. But, the learned trial Judge failed to consider his submission and dismissed the application on the ground that this petition was filed with intention to drag on the



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proceedings and also there was no need to appoint Advocate Commissioner in this case. Hence, he seeks to allow this petition.

4. The learned counsel appearing for the respondents 1 to 3 and 7 reiterated the same argument pleaded before the learned trial judge and seeks to dismiss this petition.

5. This Court considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record and the impugned order.

6. The petitioner has filed the petition under Order 26 Rule 9 r/w 151 CPC to appoint Advocate Commissioner to measure and note down physical features of suit scheduled property and the location of the property of the respondent Nos.4 to 7. On going through the record, it is found that the petitioner has filed suit for partition. The respondent Nos.4 to 7 is decree holders in O.S.No.1778 of 1993. According to the petitioner the said decree had been obtained against some of the co-owners without impleading petitioner. Therefore, the petitioner has filed the comprehensive suit for



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partition and to set-aside the decree in O.S.No. 1778 of 1993 and sought injunction restraining the respondent Nos 4 to 7 from executing the decree in O.S.No.1778 of 1993. In the said suit in O.S.No. 1778 of 1993, the respondent Nos. 4 to 7 had obtained the decree of mandatory injunction and other reliefs. In the said suit also a senior member of bar was appointed as an Advocate Commissioner and his report was considered and decree was granted and said decree was confirmed in Appeal Suit in A.S.No.188 of 2002. According to the respondent Nos 4 to 7, now, to protract the execution of the decree in O.S.No.1778 of 1993 present suit and the application has been filed. The said contention of the respondents in the peculiar circumstances of the case deserves to be accepted for the reason that to decide the claim of the petitioner in the present suit, it is not necessary to appoint Advocate Commissioner. The entitlement of share in the suit scheduled property is itself in dispute. Further, the petitioner filed suit to set aside the decree granted in favour of the respondent Nos.4 to 7. Once, the decree is out of the purview, the respondent No. 4 has no right over the suit scheduled property. Therefore, the learned trial Judge correctly appreciated the application and held that it is not necessary to appoint Advocate Commissioner and this Court finds no merit in the revision.



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7. Accordingly, this civil revision petition is dismissed. The learned trial judge is directed to dispose of the suit in O.S.No.927 of 2012 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

21.02.2024

NCC : Yes / No

Index : Yes / No

Internet : *Yes / No*

vsg

To

1. The Learned Principal Sub-Judge,
Madurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

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