

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) No.247 of 2015

and

M.P.No.1 of 2015

Janakirama Gounder (Died)

1. Bakthavatchalam

...

Petitioner

Vs.

Ranganatha Gounder (Died)

1. Ganesan

2. Murugaiyan

3. Selvam

4. Boobalan

5. Kokilambal

6. Nagammal

7. Meena

8. Uma

...

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 19.09.2014 in I.A.No.539 of 2013 in O.S.No.285 of 1995 on the file of the District Munsif - cum - Judicial Magistrate, Vanur.

For Petitioners : Ms.N.Mala

ORDER

This civil revision petition arises out of the order dated 19.09.2014 passed by the District Munsif - cum - Judicial Magistrate, Vanur, in I.A.No.539 of 2013 in O.S.No.285 of 1995.

2. The petitioner is the plaintiff in O.S.No.285 of 1995. After contest, the suit was dismissed. Aggrieved by the Judgment and Decree, the plaintiff filed A.S.No.5 of 2003 before the Fast Track Court No.II, Tindivanam. The learned Appellate Judge, Tindivanam, set aside the judgment and Decree and remanded the case on 18.06.2003 for re-trial with a specific direction to appoint a fresh Advocate Commissioner to measure the properties, who shall file his report within a period of three months.

3. Subsequently, an Advocate Commissioner was appointed by the trial Court and he filed his report on 10.09.2004. The petitioner filed I.A.No.539 of 2013 to re-issue the warrant for filing fresh report. That petition was allowed and the Advocate Commissioner also filed his report. The petitioner has filed the present application in I.A.No.539 of 2013 with similar prayer to re-issue the warrant for the purpose of measuring the property again and further direction to the defendants to bear their expenses.

4. The application was opposed by the respondents. The trial Court dismissed the same. Aggrieved by the order, the present civil revision petition is filed.

5. Miss.N.Mala, learned counsel for the petitioner submitted that the learned trial Court dismissed the application on the ground of delay, but the delay can not be attributed to the petitioner and in the course of judicial proceedings it occurs. It is further submitted that the suit was filed for declaration and for permanent injunction and as such, the commissioners' report is vital for determining the issues involved in the suit.

6. It is not in dispute that after the case was remanded by the Fast Track Court No.II, Tindivanam on 18.06.2003, the trial Court has appointed an Advocate Commissioner and he filed his reports in the year 2004 and 2013. It is further seen that the Appellate Court has given a specific direction to the trial Court to appoint a fresh Advocate Commissioner and he should file his report within a period of three months. Though the order was passed on 18.06.2003, the petitioner chose to file this application after lapse of 10 years. The trial Court on proper appreciation of the entire facts, dismissed the application which does not warrant interference by this Court.

K.KALYANASUNDARAM, J.

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In the result, the civil revision petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

29.01.2015

Index : Yes/No

Internet : Yes/No

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To

The District Munsif - cum - Judicial Magistrate, Vanur.

C.R.P.(PD) No.247 of 2015

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