

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.No.3490 of 2015

and

M.P.No.1 of 2015

1.N.Gopal
S/o.Narayanan

2.G.Muralitharan
S/o.Gopal

... Petitioners/Petitioners/Defendants

Vs.

M/s.Podar Niket Developers Ltd.,
Wallwood Estates
Rep by its Manager Mr.Godwin-Reginald
S/o.Reginald Selvaraj.

.. Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and final order dated 06.08.2014 made in I.A.No.369 of 2014 in I.A.No.86 of 2011 in O.S.No.176 of 2010 on the file of the Subordinate Judge, Nilgiris, Udhamandalam.

For Petitioner : Mr.D.J.Venkatesan

For Respondent : Ms.AL.Gandhimathi

O R D E R

The revision petitioners are the defendants in O.S.No.176 of 2010 on the file of the Subordinate Court, Nilgiris at Udhamandalam.

2. The revision petitioners filed I.A.No.86 of 2011 in O.S.No.176 of 2010 for appointment of an Advocate Commissioner to note down the physical features with the assistance of a qualified surveyor and to file a report. The said application was allowed and Commissioner was appointed on 08.06.2011.

However, the Advocate Commissioner did not submit his report and the Surveyor also got transferred. Thereafter, no Surveyor was deputed due to parliamentary elections in 2014. While so, when the application in I.A.No.86 of 2011 came up for hearing on 12.02.2014, the same was closed.

3. In these circumstances, the revision petitioners filed I.A.No.187 of 2014 in O.S.No.176 of 2010 to appoint a fresh Advocate Commissioner. The same was rejected by the Trial Court by an order dated 23.04.2014⁷ holding that the revision petitioners could file an application to revive the earlier application in I.A.No.86 of 2011.

4. Hence, the revision petitioners filed I.A.No.369 of 2014 in O.S.No.176 of 2010 to re-open I.A.No.86 of 2011, which was closed on 12.02.2014. The said application was rejected by the Trial Court on 06.08.2014. This revision petition is against the aforesaid order dated 06.08.2014.

5. In the said circumstances, when this revision petition was filed, Notice of Motion returnable by 12.10.2015 was ordered by this Court on 07.09.2015 and interim stay of further proceeding was also granted.

6. Today when the matter is listed, both the learned counsel for the petitioner as well as the learned counsel for the respondent are heard. Since, the appointment of Advocate Commissioner is not questioned by the respondent/plaintiff, I am inclined to allow this Civil Revision Petition. Accordingly, the order dated 06.08.2014 made in I.A.No.369 of 2014 in O.S.No.176 of 2010 to re-open I.A.No.86 of 2011 is set aside and the said application in I.A.No.369 of 2014 in O.S.No.176 of 2010 is allowed. Furthermore, the Trial Court is directed to issue appropriate order to the Advocate Commissioner to submit the report with the assistance of the Surveyor.

7. At this juncture, it is stated by the learned counsel for the respondent/plaintiff that the trial has already commenced and P.W.1 has to be cross-examined.

8. In these circumstances, while directing the Trial Court to issue appropriate order to the Advocate Commissioner to give a report with the assistance of the Surveyor, in view of the order already passed in I.A.No.86 of 2011 in O.S.No.176 of 2010, a further direction is issued to the Trial Court to

dispose of the main suit within a period of one year from the date of receipt of a copy of this order.

9. The Civil Revision Petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

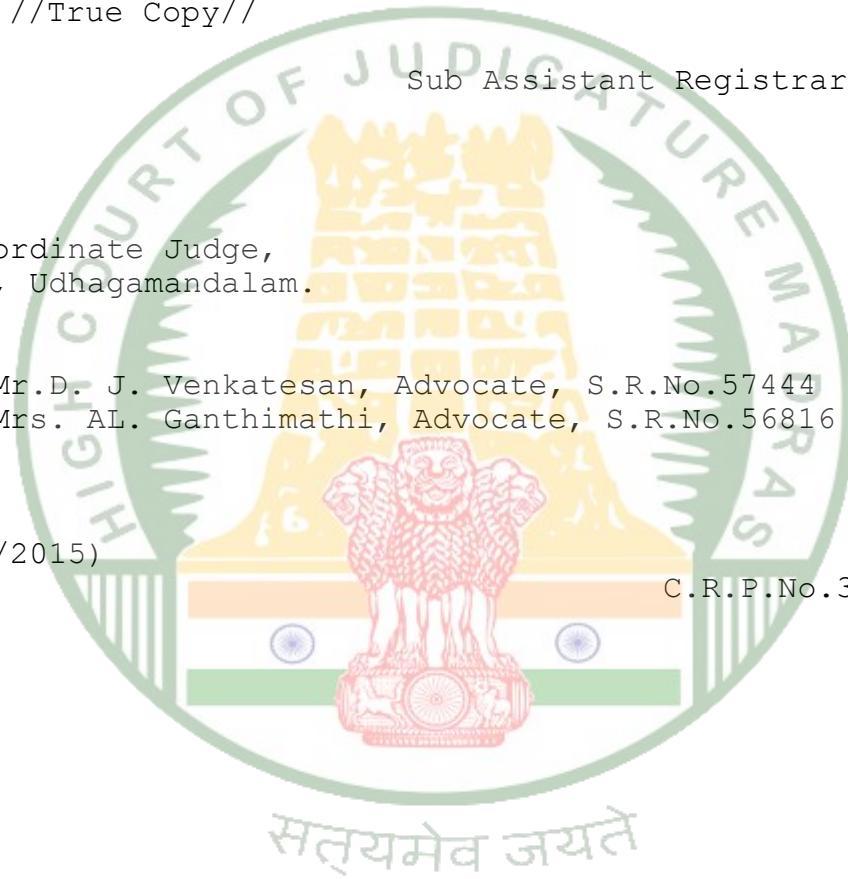
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To
The Subordinate Judge,
Nilgiris, Udhagamandalam.

+1cc to Mr.D. J. Venkatesan, Advocate, S.R.No.57444
+1cc to Mrs. AL. Ganthimathi, Advocate, S.R.No.56816

AP (CO)
EU (02/11/2015)

C.R.P.No.3490 of 2015



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