

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4021 of 2015
and M.P.No.1 of 2015

S.Velmurugan

.. Petitioner

Vs

1.Harikrishnan

2.Jagetha

3.The Sub-Registrar,
Dusi Sub-Registrar Office,
Dusi, Cheyyar Taluk,
Thiruvannamalai District.

4.Thangamani

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 12.02.2015 made in I.A.No.1034 of 2014 in O.S.No.387 of 2008 on the file of the Principal District Munsif Court, Cheyyar, Thiruvannamalai District.

For Petitioner : Mr.K.G.Senthil Kumar

ORDER

The Civil Revision Petition is filed against the order dated 12.02.2015 made in I.A.No.1034 of 2014 in O.S.No.387 of 2008 on the file of the Principal

District Munsif Court, Cheyyar, Thiruvannamalai District.

2.The petitioner as a plaintiff filed a suit in O.S.No.387 of 2008 for declaration of title and also for recovery of possession after removal of the encroachment made by the defendant in item Nos.1, 2 and 4 of the suit properties and other reliefs. The plaintiff/petitioner also filed an application in I.A.No.795 of 2012 for appointment of Advocate Commissioner, where Advocate Commissioner was appointed, he inspected the properties and filed a report. Thereafter, the said application under Order 29 Rule 9 of CPC was closed. Hence, he filed the present application in I.A.No.1034 of 2014 for appointment of new Advocate Commissioner to inspect the property, to note down the physical features, measure the property and to file a report. The Trial Court after hearing both sides has dismissed the application. Against which, the present Civil Revision Petition has been filed.

3.At the time of admission, the argument of the learned counsel for the petitioner is heard in length.

4.Learned counsel for the petitioner submitted that it is an admitted fact that he has filed I.A.No.795 of 2012 for appointment of Advocate Commissioner, in which Advocate Commissioner was appointed, inspected the

property on 08.06.2013 and filed a report. He further submitted that he has filed his objections for the Advocate Commissioner's report. But the Trial Court has not considered the objections and closed the application. Hence, he was forced to file the present application for appointment of new Advocate Commissioner and the Trial Court has dismissed the application. Therefore, he prayed for setting aside the order passed by the Trial Court.

5.Considering the argument advanced by the learned counsel for the petitioner, I am of the view that once the Advocate Commissioner has been appointed and filed a report, unless the Advocate Commissioner's report has been scrapped new Advocate Commissioner could not be appointed. Furthermore, if the petitioner found any defect in the Advocate Commissioner's report he may very well file an application for direction to re-issue the warrant to the same Advocate Commissioner to rectify the defect in the Advocate Commissioner's report after his re-visit. But without doing so, the petitioner/plaintiff filed a fresh application for appointment of new Advocate Commissioner which is unsustainable. So, the Trial Court has rightly dismissed the application filed by the petitioner/plaintiff for appointment of new Advocate Commissioner. Hence, the impugned order passed by the Trial Court is hereby confirmed and consequently, the Civil Revision Petition is hereby dismissed.

R.MALA. J.,

cse

6.In the result, the Civil Revision Petition is dismissed. However, the petitioner/plaintiff can very well examine the Advocate Commissioner and during the examination, he can clarify the defects in the Advocate Commissioner's report. No costs. Consequently, connected miscellaneous petition is closed.

15.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Principal District Munsif Court,
Cheyyar, Thiruvannamalai District.

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