

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3 of 2014

Vijaya Mookim : Petitioner
versus

M/s.Praxair India Pvt. Ltd.,
Praxiar House,
Ulsoor Road,
Bangalore, 560 042
Karnataka State : Respondents

PRAYER: Revision filed against the order dated 29.11.2013 in I.A.No.227 of 2013 in O.S.No.8 of 2011 on the file of the District Munsif, Ranipet.

For petitioner :: Mr.R.N.Amarnath

For respondents :: No appearance

ORDER

The petitioner filed a suit for declaration and injunction before the learned District Munsif, Ranipet. In the said suit, the petitioner filed an application in I.A.No.227 of 2013, for appointment of Advocate Commissioner. The Trial Court allowed the said application. The Advocate Commissioner appointed by the Trial Court inspected the property and submitted a report. There was no objection filed by the respondent. The Trial Court closed the application by receiving the report. Thereafter, the Advocate Commissioner was examined by the parties.

2. While so, the respondent filed an application in I.A.No.227 of 2013 to direct the Advocate Commissioner to conduct fresh inspection with the assistance of a surveyor and file a fresh report. The application was allowed by the Trial Court. The order is under challenge at the instance of the respondent in I.A.No.227 of 2013.

3. The learned counsel for the petitioner contended that the Advocate Commissioner submitted his report pursuant to the order passed by the Court in I.A.No.99 of 2012. The respondent failed to file objection to the report. The report was accepted. The learned Trial Judge was therefore not correct in directing fresh inspection.

4. None appears for the respondent.

5. The Trial Court appointed an Advocate Commissioner pursuant to the application filed by the petitioner in I.A.No.99 of 2012. It is a matter of record that the Advocate Commissioner submitted his report and the same was accepted by the Trial Court. The respondent has not filed objection to the Advocate Commissioner's report, meaning thereby, the respondent has no objection to the report and plan submitted by the Advocate Commissioner.

6. The parties examined the Advocate Commissioner. It was only thereafter, the respondent filed an application for a direction to the Advocate Commissioner to conduct a fresh inspection. While allowing the application filed by the respondent, the Trial Court appears to have omitted to note the material fact that the respondent has not filed any objection to the report submitted by the Advocate Commissioner earlier. When it is made out that the Advocate Commissioner's report was accepted by the Trial Court and he was subjected to examination by the parties, there is no question of permitting fresh inspection by the Commissioner, at a later point of time. This aspect was not considered by the learned Trial Judge. I am therefore of the view that the order passed by the learned District Munsif, Ranipet is liable to be set aside.

7. In the result, the order dated 29 November 2013 is set aside. The application in I.A.No.227 of 2013 is dismissed.

8. In the upshot, I allow the civil revision petition. No costs. Consequently, M.P.No.1 of 2014 is closed.

08.11.2016

Index:Yes/no
tar

To
The District Munsif Court, Ranipet

K.K.SASIDHARAN, J.

(tar)

C.R.P.(P.D.) No.3 of 2014

08.11.2016

<http://www.judis.nic.in>