

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3077 of 2014
and M.P.No.1 of 2014

Narayanan

.. Petitioner

Vs

1.Suriyakala
2.Valarmathy
3.Vasugi
4.Kalpana

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.04.2014 made in I.A.No.117 of 2014 in I.A.No.292 of 2013 in O.S.No.63 of 2012 on the file of the District Munsif Court, Vanur.

For Petitioner : Mr.T.P.Manoharan

For Respondents : Mrs.S.Devie

ORDER

The Civil Revision Petition is filed against the order dated 30.04.2014 made in I.A.No.117 of 2014 in I.A.No.292 of 2013 in O.S.No.63 of 2012 on the file of the District Munsif Court, Vanur.

2.The respondents as plaintiffs filed a suit for declaration of title and also for injunction. The defendant filed the written statement and contested the suit. During the pendency of the suit, the plaintiffs filed an application in I.A.No.292 of 2013 for appointment of Advocate Commissioner. Due to his ill-health, the defendant was unable to file a counter in time and hence, an exparte order has been passed appointing an Advocate Commissioner. Aggrieved against that, the defendant filed an application in I.A.No.117 of 2014 for setting aside the order passed in I.A.No.292 of 2013 dated 11.09.2013. The Trial Court after hearing both sides has dismissed the application. Against which, the present Civil Revision Petition has been filed.

3.Heard the learned counsel for the petitioner and perused the typed set of papers.

4.Even though notice has been served on the respondents and the name of the counsel has been printed in the list, there was no representation on behalf of the respondents for several hearings. Hence, the matter was posted today (27.01.2016) under the caption “for orders”. Even today, there is no representation on behalf of the respondents.

5.The respondents as plaintiffs filed a suit for declaration of title and

injunction. The defendant filed the written statement and contested the suit. During the pendency of the suit, the plaintiffs filed an application in I.A.No.292 of 2013 for appointment of Advocate Commissioner and because of non-filing of the counter by the defendant, the said application was allowed and Advocate Commissioner was appointed. The reason assigned by the defendant was that due to his ill-health he was not able to contact his counsel and give instructions to file a counter and he has also produced the medical certificate. It is pertinent to note that the prayer sought for in I.A.No.292 of 2013, wherein it was stated that the Advocate Commissioner has to be appointed to visit the property and to find out as to who is in possession of the property. But it is well settled dictum of the Apex Court that no Commissioner shall be appointed to find out as to who is in possession, that too, to collect material evidence. The Trial Court without considering the same has allowed the application. In such circumstances, I am of the view that the order passed in I.A.No.292 of 2013 itself is unsustainable and an opportunity must be given to the defendant/revision petitioner to file his counter and decide the matter on merits. Hence, the impugned order in I.A.No.117 of 2014 is hereby set aside and consequently the Civil Revision Petition is hereby allowed.

6. In the result, the Civil Revision Petition is allowed. Further, since the defendant/revision petition has already filed a counter, the Trial Court is directed to dispose of I.A.No.292 of 2013 within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

27.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The District Munsif, Vanur.

R.MALA. J.,

cse

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