

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD) No.1650 of 2015

1.Venkatesan
2.Velmurugan
3.Sangeetha
4.Visalakshi

... Petitioners

Vs.

Thillainayagam

... Respondent

Prayer:

Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decretal orders passed in I.A.No.523 of 2014 in O.S.No.245 of 2013 dated 02.02.2015 on the file of the Court of Principal District Munsif, Chidambaram and allow the said I.A., by allowing the Civil Revision Petition.

For Petitioners : Mr.A.Muthukumar
For respondent : Mr.T.R.Rajaraman

ORDER

Challenging the impugned order passed on 02.02.2015 in I.A.No.523 of 2014 in O.S.No.245 of 2013 wherein the prayer for re-issue the Commissioner's warrant to Advocate/ Commissioner

and direct him to inspect the suit property once again with the assistance of qualified Surveyor came to be dismissed under Order 26 Rule 9 of C.P.C., this revision has been filed.

2.Heard both sides.

3.The learned counsel for the petitioners would submit that the respondent as plaintiff filed the suit for permanent injunction. At the time of filing of the suit itself he filed I.A.No.532 of 2013 for appointment of Commissioner and Commissioner has been appointed and he inspected the property and filed interim report. Subsequently, petition has been adjourned to several hearings for filing of final report, but on 30.06.2014, a memo has been filed by the Advocate Commissioner stating that the interim report shall be treated as final report and the same was recorded. Then it was adjourned to 31.07.2014 for objections within seven days and on 31.07.2014 objections has not been filed and hence, the petition was closed.

4.The learned counsel for the petitioners would further submit that thereafter, the petitioners herein/ defendants filed I.A.No.523

of 2014 praying to re-issue the Commissioner's warrant to Advocate/ Commissioner and direct him to inspect the suit property once again with the assistance of qualified Surveyor and they raised three points that no notice has been issued to them for inspection on 31.10.2013, the property has been inspected in their absence and the Commissioner inspected the property without the assistance of a qualified Surveyor. Even though, they raised three points, the Trial Judge did not consider the points and held that the suit is for permanent injunction and it is the duty of the plaintiff to prove his case and that they have filed written statement in the suit and the suit is posted for framing of issues and dismissed the application. He would submit that the Trial Court has failed to consider the grounds raised by the petitioners to scrap the report of the Commissioner. Hence, the order itself is perverse and prayed for setting aside of the same.

5.To substantiate their claim he filed documents before the Trial Court to show that they have not received this intimation from the Commissioner because the Commissioner has posted the letter on 29.10.2013 and in that it was stated the date of inspection is 30.10.2013. So, there is no evidence to show that letter has been

received by these petitioners. He would submit that the petitioners received the letter only after inspection. Further, he taken me to the report filed by the Commissioner. In that he has stated that he has inspected the property only on 31.10.2013 but there is no document to show that he issued a notice to the petitioners for his inspection on 31.10.2013. He would further submit that the Commissioner never stated that he inspected the property along with Surveyor and measured the property.

6.In such circumstances, I am of the view that this aspect has not been considered by the Trial Court. Once the Trial Court has appointed commissioner in the case of permanent injunction, the Court ought to have considered this point raised by the petitioners and it will not discard the argument advanced by the petitioners stating that the suit is only for permanent injunction.

7.The learned counsel for the respondent would submit that he has not filed any objection to the interim report and the court proceedings show that no objections filed and on this basis only, it was closed. But according to the learned counsel he has filed report on 08.07.2014 after serving notice.

8.Considering the same, the Commissioner has not given intimation about his inspection to the petitioners herein well in advance, he has not inspected the property in the presence of the petitioners herein, he has not inspected the property with the assistance of a qualified Surveyor to measure the property. So the Commissioner has not executed the warrant properly. Furthermore, it is pertinent to note that the commissioner filed his report as an interim report and even after several adjournment from 22.11.2013 to 30.06.2014 for filing of final report, on 30.06.2014, he filed memo stating that the interim report shall be treated as final report and that has been recorded.

9.In such circumstances, the Commissioner itself is not certain about his report whether it is interim or final, so the report ought to have been set aside. Hence, the report filed by the Commissioner is hereby scrapped. The Trial Court is directed to appoint new Commissioner with direction to inspect the property along with qualified Surveyor after giving notice to both parties well in advance and inspect the property and measure the property and note down the physical features and file a report. The Trial Court is also

directed to fix the remuneration to the new Commissioner. This petition is ordered accordingly.

10.At this juncture, the learned counsel for the respondent wants earlier disposal of the suit in O.S.No.245 of 2013. Hence, the Trial Court is directed to appoint Commissioner within a period of ten days from the date of receipt of a copy of this order and both counsels are directed to cooperate for the Commissioner's inspection and after filing of the report, the Trial Court is directed to dispose of the suit in O.S.No.245 of 2013 within a period of six months from the date of filing of the Commissioner's report.

11.This Civil Revision Petition is ordered accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

22.01.2016

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Index: Yes/ No
Internet: Yes/ No
Note: Issue order copy on 27.01.2016

To

1.The Principal District Munsif, Chidambaram

R.MALA,J.

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