

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.11.2016**

CORAM:

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

C.R.P.(P.D.) No.4762 of 2014

C.Mani : Petitioner
versus

1.G.Elumalai
2.G.Govindaraj : Respondents

PRAYER: Revision filed under Article 227 of the Constitution of India against the fair and decreetal order dated 22.7.2013 in I.A.No.79 of 2013 in I.A.No.350 of 2010 in O.S.No.59 of 2010 on the file of the District Munsif, Sholinghur.

For petitioner :: Mr.J.Lakshmi Narayanan

For respondents :: No appearance

ORDER

The petitioner filed a suit for declaration and injunction in O.S.No.59 of 2010 before the Trial Court.

2. The petitioner filed an application in I.A.No.350 of 2010 for appointment of an Advocate Commissioner. The learned Trial Judge appointed an Advocate Commissioner. The Advocate Commissioner submitted a report. The learned Trial Judge without recording the objections or making an endeavour to pass an order as to whether report is received or not, closed the application in I.A.No.350 of 2010. The petitioner

therefore filed I.A.No.79 of 2013 to condone the delay of 630 days in filing objection to the report. The learned Trial Judge allowed the application by order dated 22 July 2013. However, the request to reopen the application in I.A.No.350 of 2010 was rejected. The said order is under challenge in this civil revision petition.

3. Heard the learned counsel for the petitioner. None appears on behalf of the respondent in spite of printing their names in the cause list.

4. There is no dispute that the Trial Court appointed an Advocate Commissioner pursuant to the order in I.A.No.350 of 2010. It is also a matter of record that the Advocate Commissioner inspected the property and submitted his report. It is true that the petitioner failed to file objections to the report submitted by the Advocate Commissioner. However, the fact remains that even before filing objection to the report by the petitioner, Trial Court closed the application in I.A.No.350 of 2016. The dates and events would indicate that the Court closed the application, immediately on receipt of report.

5. The appointment was made by the Court pursuant to the application submitted by the petitioner. The Court should receive the report and pass an order as to whether the Advocate Commissioner report is to be received or not. However, no such effort was taken by the Trial Court. I

am therefore of the view that appropriate orders should be passed by the Trial Court after resorting the application in I.A.No.350 of 2010, with regard to the report submitted by the Advocate Commissioner.

6. The order dated 22 July 2013 is set aside in part insofar as the observation given by the learned Trial Judge that there is no need to reopen the application in I.A.No.350 of 2010 is concerned.

7. The learned Trial Judge is directed to restore the application in I.A.No.350 of 2010, conduct enquiry and pass an order with regard to the report submitted by the Advocate Commissioner, taking into account the objections submitted by the parties.

8. The Civil revision petition is allowed to the extent indicated above.
No costs. Consequently, M.P.No.1 of 2014 is closed.

24.11.2016

Index:Yes/no
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To
The District Munsif Court, Sholinghur.

K.K.SASIDHARAN, J.

(tar)

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