

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

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The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)No.601 of 2014

and

M.P.No.1 of 2014

1. Ms.Vasant. R.P.
2. Ms.Bharati R.P.
3. Ms.Kalpana R.P.
4. Mr.Dharmendra R.P. ... Petitioners

Vs.

1. Kanchan Khubchandani
2. Mr.Manish Khubchandani ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, as against the order, dated 04.03.2013, passed in I.A.No.16837 of 2010, in O.S.No.8970 of 2008, on the file of the XII Assistant City Civil Court, Chennai.

For Petitioners : Mr.N.Anand Venkatesh for
for M/s.T.S.Baskaran and C.Jaya Chithra

For Respondents : Mr.Sundeep S.Shah for
M/s. Shah and Shah

ORDER

The petitioners filed an Application before the XII Assistant City Civil Court, Chennai, in I.A.No.16837 of 2010, for appointment of an Advocate Commissioner to inspect the property with the help of a Chartered Engineer, and submit a report. The Application was allowed by the trial Court, with a direction to the Advocate Commissioner to inspect the property. There was no direction to take the assistance of Chartered Engineer. Since the Advocate Commissioner appointed by the trial Court, by order, dated 09.11.2011, failed to inspect the property, another Advocate Commissioner was appointed by the trial Court, by order, dated 01.08.2012. While making appointment in the place of the erstwhile Advocate Commissioner, by order, dated 01.08.2012, the trial Court permitted the Advocate Commissioner to take the assistance of qualified Engineer. In the meantime, the respondents filed a Memo before the trial Court, indicating that there was no order earlier to take the assistance of qualified Engineer, and as such, no such direction could be issued at a later point of time. The learned trial Judge, notwithstanding the report filed by the Advocate Commissioner with the assistance of Engineer, allowed the Memo, indicating that no reliance would be placed on the report submitted by the

Engineer. The Order passed by the trial Court is under challenge in this Civil Revision Petition.

2. The learned counsel appearing on behalf of the petitioners contended that the Commissioner appointed by the trial Court originally, by order, dated 09.11.2011, wanted the assistance of a Chartered Engineer. It was only pursuant to the Memo filed by the earlier Advocate Commissioner, the trial Court, permitted the Advocate Commissioner to take the assistance of Chartered Engineer, while passing the subsequent order, appointing another Advocate Commissioner. The trial Court was, therefore, not correct in accepting the Memo at a later point of time.

3. The learned counsel for the respondents justified the order passed by the trial Court.

4. The petitioners filed an Application in I.A.No.16837 of 2010, for appointment of Advocate Commissioner. The petitioners wanted the trial Court to appoint an Advocate Commissioner to inspect the property, more particularly, the western wall of the property, note down the offending

construction along with the western wall of the property, take photos by taking the assistance of a photographer, and also to take the assistance of a qualified Engineer. The trial Court passed an order, dated 09.11.2011, appointing Advocate Commissioner. Eventhough, a prayer was made to permit the Advocate Commissioner to take the assistance of photographer, and qualified Engineer, no such permission was granted by the trial Court. The trial Court simply directed the Advocate Commissioner to inspect the property and submit a report.

5. It is a matter of record that the Advocate Commissioner failed to inspect the property. The trial Court posted the matter on multiple occasions for filing report by the Advocate Commissioner. Finally, the trial Court passed an order on 01.08.2012, appointing another Advocate Commissioner to inspect the property.

6. Eventhough, there was no permission granted to the Advocate Commissioner to take the assistance of a qualified Engineer originally, the order passed on 01.08.2012 proceeds, as if, the Advocate Commissioner was permitted to take the assistance of a qualified Engineer.

7. The request made by the petitioners to permit the Advocate Commissioner to take the assistance of a qualified Engineer was impliedly rejected by the trial Court, by order, dated 09.11.2011.

8. While directing the Commissioner to inspect the property, there was no permission given to him to take the assistance of a qualified Engineer. There is nothing on record to show that the Commissioner appointed by the trial Court earlier filed a Memo before the Court to permit her to take the assistance of Engineer. The subsequent order, appointing the Advocate Commissioner, in effect, was a continuation of the earlier order. The Advocate Commissioner earlier appointed was replaced by another Advocate Commissioner. When, at a later point of time, it was found that inadvertently, permission was granted to the Advocate Commissioner to take the assistance of a qualified Engineer, the trial Court rightly, recalled the said direction.

9. It is true that the permission given to the Advocate Commissioner to take the assistance of qualified Engineer was recalled only on the basis of the Memo filed by respondents. However, the fact remains

that the trial Court rightly rectified the mistake committed earlier, by modifying the order, dated 01.08.2012.

10. When it is made out that the prayer made by the petitioners to permit the Advocate Commissioner to take the assistance of qualified Engineer was rejected and direction was issued to the Commissioner to inspect the property by himself, there is no question of giving permission, during the currency of the order in I.A.No.16837 of 2010, to take the assistance of qualified Engineer, without there being no change of circumstances.

11. In order to pass further orders, permitting the Advocate Commissioner to take the assistance of qualified Engineer, there should be an Application filed either by the parties or a Memo by the Advocate Commissioner. In the subject case, there was no such request made by the parties or the Advocate Commissioner after passing the order, dated 09.11.2011. Such being the factual position, the learned trial Judge was perfectly correct in recalling the order, permitting the Advocate Commissioner to take the assistance of qualified Engineer. I do not find any

error or illegality in the Order passed by the trial Court. There is absolutely, no merit in the contentions taken by the petitioners.

12. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected Miscellaneous Petition is closed.

07.11.2016

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Index : Yes/No
Internet ; Yes/No

To
The XII Assistant City Civil Court,
Chennai.

K.K.Sasidharan,J.,

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