

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4707 of 2015

and

M.P.No.1 of 2015

1.Muthusamy
2.Nachimuthu
Karuppasamy (died)
3.Karunai Ammal
4.Mohanraj
5.Mohanambal

... Petitioners

vs.

1.Nanjappa Gounder
2.Thangavelu
3.Santhamani
4.Rayappa Gounder

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the District Munsif Court, Palladam dated 26.03.2015 made in I.A.No.316 of 2013 in O.S.No.16 of 2001.

For Petitioners : Ms.V.Diviabharathi

For Respondent : No Appearance

ORDER

Though the respondents have been served with notice and their names have been printed in the cause list, they have not chosen to enter appearance. Hence this court deems it appropriate to pass an order, after hearing the submissions to be made on the side of the petitioners. Accordingly, the arguments advanced on behalf of the petitioners in the revision petition are heard.

2. The revision petitioners are the plaintiffs in O.S.No.16/2001 pending on the file of the Court of District Munsif, Palladam. The suit is one for permanent injunction restraining the respondents herein/defendants from in any way interfering with petitioners'/plaintiffs' peaceful possession and enjoyment of the suit property. 1 Acre 89 ³/₄ cents comprised in S.No.29/2 in Samalapuram Village along with the building and cart track alleged to be in existence in the said extent has been shown, as the suit property.

3. The respondents herein/defendants, after entering appearance, filed an application I.A.No.614/2001 for appointment of an Advocate-Commissioner to inspect the suit property, measure it with the assistance of a surveyor and submit a plan and report. The said application was allowed and the Advocate Commissioner appointed therein, measured the suit property with the help of a Surveyor and submitted a report and plan.

4. Thereafter, the petitioners herein/plaintiffs filed an application in I.A.No.364/2008 praying for the appointment of an Advocate-Commissioner for the above said purpose. The said application was resisted by the respondents herein/defendants. However overruling the objections, the learned trial Judge allowed the said application by an order dated 20.06.2008. However since the Advocate-Commissioner did not file the report in time, the learned trial Judge chose to close the said application. Hence the petitioners/plaintiffs were constrained to file I.A.No.316/2013 to reopen I.A.No.364/2008 and re-issue the warrant to the same Commissioner to inspect the suit property with the assistance of the Taluk Surveyor and file a report. The said application was resisted by the respondents as belated, motivated and unnecessary. The learned trial Judge, after hearing, by an order dated 26.03.2015 dismissed the

said application holding the said application to be belated and aimed at prolonging the case. It is as against the said order, the present civil revision petition has been filed.

5. The court below chose to allow I.A.No.364/2008 and appointed an Advocate-Commissioner to visit the suit property, measure the same with the help of Taluk Surveyor and submit a report and a plan. The impugned order does not show any default on the part of the petitioners herein/plaintiffs either in making payment of the remuneration to the Commissioner or in extending co-operation to the Commissioner by being present at the date and time fixed by the Commissioner for his visit and taking measurement.

6. On the other hand, it is quite obvious that the Advocate-Commissioner appointed by the court alone committed default in not executing the warrant. If at all the Advocate-Commissioner failed to execute the warrant, the court ought to have made him to execute the warrant within a time fixed by the court or asked him to return the warrant and also the remuneration and thereby appointed a new Commissioner to do the job. Instead of doing it, the learned trial Judge chose to simply close the application on the default committed by the Advocate Commissioner and thereby forcing the petitioners herein to file I.A.No.316/2013 to reopen the matter and reissue the warrant.

7. A perusal of the impugned order will show that for the inaction on the part of the Advocate-Commissioner and also due to the failure on the part of the court below to take further measures to see that the warrant issued to the Commissioner was executed properly or to make the Commissioner surrender the warrant and to appoint a new Commissioner, the Court below simply chose

to close the said petition. As such, the prayer made by the revision petitioners for reopening of the said petition and for reissuance of the warrant, either to the very same Commissioner or to any other Commissioner, cannot be said to be either malafide or unwarranted. Hence the order of the Court below, which is impugned in this revision, is liable to be interfered with.

In the result, the civil revision petition is allowed. The order of the trial court dated 26.03.2015 made in I.A.No.316/2013 in I.A.No.364/2008 in O.S.No.16/2001 pending on the file of the Court of District Munsif, Palladam is set aside. I.A.No.316/2013 shall stand allowed. The trial court shall take up I.A.No.364/2008 for further hearing, reissue the warrant to the Commissioner already appointed or appoint a new Commissioner for the purpose of measuring the suit property with the help of Surveyor and submit a report and plan. Since the matter is of the year 2001, the trial court is directed to complete the said process without further loss of time, thereafter conduct the trial on a day to day basis and dispose of the suit as expeditiously as possible, in any event on or before the 31st day of August 2016. However, there shall be no order as to cos. Consequently, the connected miscellaneous petition is closed.

22.04.2016

Index : Yes/No
Internet : Yes/No
asr

To

The District Munsif, Palladam

P.R.SHIVAKUMAR, J.
asr/-

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