

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 5.4.2016.

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

Civil Revision Petition (PD) No.1115 of 2016
and
C.M.P.No.6125 of 2016

1. M.Saraswathi
2. M.Gopalakrishnan
3. M.Madhavan

Petitioners

vs.

1. M.Saravanan
2. Deepak Chedda
3. M.Mathiazhagan
4. P.Balu
5. K.Babu
6. Shankar

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 20.1.2016 in I.A.No.140 of 2015 in O.S.No.3380 of 2013 passed by the XVIII Additional City Civil Court, Chennai.

For petitioner : Mr.V.Anand

For R1 : Mr.V.S.R.Hanu Babu Koka

ORDER

This revision has been preferred as against the order of the learned XVIII Additional Judge, City Civil Court, Chennai dated

20.1.2016 made in I.A.No.140 of 2015 in O.S.No.3380 of 2013 on the file of the said court.

2. The suit is one for partition. An application was filed by the first respondent herein/plaintiffs for appointment of an advocate commissioner to note down the physical features and the additional constructions put up after an order of interim injunction came to be passed by the Trial Court. The application was resisted and rejecting the objections raised by the revision petitioners herein, the learned Trial Judge allowed the said application. However, further orders appointing the advocate commissioner is yet to be passed. It is as against the said order, the present civil revision petition has been filed.

3. Except the first respondent, other respondents are not interested and they remained ex parte in the suit. The first respondent has filed a caveat and he has been served with a notice. The learned counsel for the first respondent is also present. Both the counsel for the petitioner and the counsel for the first respondent submit that the civil revision petition may be disposed of at the stage of admission itself. Hence, the submissions made by Mr.V.Anand, on behalf of the petitioner and Mr.V.S.R.Hanu Babu Koka, on behalf of the first respondent are heard.

4. The learned counsel for the petitioner submits that an advocate commissioner cannot be appointed to find out when the alleged additional constructions were put up in the absence of a previous report containing the physical features and the then existing superstructures. It is the further submission of the learned counsel for the petitioner that commissioner cannot be appointed to find out as to who are the tenants and the rent paid by them in respect of the suit property.

5. The learned counsel for the contesting respondent viz., the first respondent submits that the first respondent/plaintiff is very much particular in ascertaining today's physical features so as to prevent any further construction being made by the revision petitioners and claim that such constructions were made earlier. So far as the ascertainties of the tenants and the rent paid by them is concerned, the learned counsel for the first respondent submits that the first respondent/plaintiff may not press such a relief and that he would be satisfied if a commissioner is appointed for the sole purpose of noting the physical features and the building that exists at present.

6. In view of the same, this court comes to a conclusion that the order of the Trial Court expressing its decision to appoint an advocate

commissioner shall be confirmed subject to a rider that the scope of inspection of the commissioner shall be restricted to the noting of the present physical features and the existing building, without any reference to the age of the building and that the commissioner shall not have the power to ascertain who are all the tenants and what is the amount paid by them as rent.

7. The Trial Court shall pass further order naming the advocate commissioner and fixing his remuneration. Such an order shall be passed within a week from the date of receipt of a copy of this order. The civil revision petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

5.4.2016.

Index: Yes.
Internet: Yes.
ssk.

To

XVIII Additional City Civil Court, Chennai.

P.R.SHIVAKUMAR, J.

Ssk.

C.R.P.(PD) No.1115 of 2016

5.4.2016.