

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1167 of 2016
and
C.M.P.Nos.6375 and 10323 of 2016

R.V.Sathyamoorthy

... Petitioner

vs

1.P.Godhandapani
2.K.Ramesh
3.K.Ravichandran
4.K.Sankar
5.K.Murali
6.T.Sumathi
7.N.Ramasamy
8.N.Rajendrakumar @ Raja
9.N.Radhabai
10.Vijayashanmughasundaram
11.V.S.Navaneethakrishnan
12.Anand
13.Ramya
14.RV.Jayaprakash
15.RV.Durairaj
16.RV.Nandakumar
17.Devakrishnaraj
18.RV.Bala Ganghadara Thilakar
19.Saroja
20.S.Bagiyalakshmi
21.S.Chandrika

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned II Additional District cum Sessions Judge, Salem passed in I.A.No.229 of 2015 in I.A.No.40 of 2013 in O.S.No.3 of 2003 on 07.03.2016.

For Petitioner : Mr.AR.L.Sundaresan Senior Counsel for
Mr. AL.Gandhimathi

For Respondents 1 to 5 : Mr.Prakash Goklaney

ORDER

This revision challenges the order of learned II Additional District cum Sessions Judge, Salem passed in I.A.No.229 of 2015 in I.A.No.40 of 2013 in O.S.No.3 of 2003 on 07.03.2016.

2. Originally the suit was filed in O.S.No.263 of 1994 on the file of Principal Sub Court, Salem by the respondents 10, 11, 14 and others, seeking partition. Thereafter the said suit was transferred to the file of II Additional District cum Sessions Court, Salem and renumbered as O.S.No.3 of 2003. A preliminary decree has been passed. The respondents have moved an application for appointing Advocate Commissioner. The Trial Court has appointed an Advocate Commissioner to divide the property by metes and

bounds. The revision petitioner moved two applications, one to receive additional counter and another to re-call the warrant issued to the Advocate Commissioner.

3. The trial Court dismissed the applications viz., I.A.Nos.215 and 216 of 2015 in I.A.No.40 of 2013 in O.S.No.3 of 2003 on 23.04.2015, even without numbering the same on the ground of maintainability. The revision petitioner filed CRP.PD Nos.2506 and 2507 of 2016 in which an order was passed on 21.08.2015 directing the trial Court to entertain both the applications and decide the same on merits. Subsequently, the said applications I.A.Nos.215 and 216 of 2016 in I.A.No.40 of 2013 in O.S.No.3 of 2003 had been heard. In para-6 of the affidavit filed in I.A.No.215 of 2015 in I.A.No.40 of 2013 in O.S.No.3 of 2003 seeking recall of the warrant to the Advocate Commissioner, it has been stated as follows:

6. In the absence of field number or survey number the property cannot be identified and while the property cannot be identified the decree based upon the same cannot be enforced/executed, likewise the decree in above case cannot be enforced/executable in the absence of the field number and survey number. It is the petitioner / plaintiff who has to get enforceable/executable decree and as they failed in that, the above application I.A.No.40

of 2013 filed based such a decree is not maintainable and the order passed in the above application for appointment of Advocate Commissioner has to be recalled.

4. On 29.09.2015, the respondent moved I.A.No.229 of 2015 in I.A.No.40 of 2013 in O.S.No.3 of 2003 seeking permission to summon the VAO, Pallapatti and Town Surveyor, Salem West, to produce the survey records with Town Survey Plan and also the Adangal, Chitta and other revenue records in the custody of the VAO and Town Surveyor. According to the respondents, they had moved the application in I.A.No.229 of 2015 to identify the property. Such application has been allowed by the Court below and hence, this revision has been preferred by the petitioner.

5. Counter affidavit has been filed by the revision petitioner in the said I.A.contending that it was duty of the respondent to obtain a proper and executable decree containing relevant survey number or field number of the property. It would not be permissible to seek the help of the Revenue authorities to identify the property for executing an un-executable decree.

6. Learned senior counsel for petitioner submits that I.A.No.229 of 2015 stands wrongly allowed by the Court below.

7.This Court has considered the rival submissions.

8. It is seen that the petitioner's case is that Preliminary decree in O.S.No.3 of 2003 is in-executable and the case of respondents/plaintiffs is that the same would be executable. Subsequent to the order passed by this Court in the said CRPs, the trial Court has closed IA.No.216 of 2016 in I.A.No.40 of 2013 in O.S.No.3 of 2003 on 18.09.2015 on the endorsement made by respondents that they have no objection to allow such I.A. which was filed towards receiving additional counter. I.A.No.215 of 2016 in I.A.No.40 of 2013 in O.S.No.3 of 2003 is pending as on date. This Court is of the view that it is not necessary to interfere with the order under challenge and interests of justice would be met by requiring Court below to dispose of I.A.No.215 of 2015. The Court below shall pass orders on I.A.No.215 of 2015 in O.S.No.40 of 2013 in O.S.No.3 of 2003 as expeditiously as possible and in any event, not later than one month from the date of receipt of a copy of this order. Nothing in this order shall be read as any expression on merits of the case of the either party.

9.The Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

02.08.2016

Index:yes/no

Internet:yes/no
kkd

To
The II Additional District cum Sessions Judge,
Salem.

C.T.SELVAM,J.

kkd

To

II Additional District cum Sessions Judge,
Salem.

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