

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.09.2016**

CORAM:

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

C.R.P.(P.D.) No.2455 of 2016 and
CMP.No.12790 of 2016

N.S.Kannan

...Petitioner

versus

1.G.Ramakrishnan

2.Thamimul Anzar

3.L.Bernard

4.B.John

5.B.Stella @ Agenesmary

6.Jami @ Anthony Sowrirajan

7.Alamelu

8.Sundaramurthi

...Respondents

(Respondents 1,3 to 6 remained
exparte and are given up)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 08.01.2016 passed in I.A.No.661 of 2015 in O.S.No.323 of 2004 on the file of Principal District Munsif Court, Cuddalore.

For Petitioner : Ms.R.Meenal

ORDER

This Civil Revision Petition is directed against the order dated 8 January 2016 in I.A.No.661 of 2015 in O.S.No.323 of 2004, whereby and where under, the learned Principal District Munsif Judge, Cuddalore was pleased to dismiss the application filed by the petitioner for appointment of an Advocate Commissioner to measure the property.

2. The petitioner filed a suit for declaration, injunction and mandatory injunction against the respondents. The petitioner immediately took up a Commission to inspect the property in question. The Commissioner submitted his report. Thereafter, another application was filed by the very same petitioner in I.A.No.408 of 2002, which was re-numbered as I.A.No.686 of 2004. The Trial Court appointed an Advocate Commissioner. The Commissioner so appointed was later substituted by another Commissioner. Thereafter, the petitioner, for reasons best known not pressed the application. The application was dismissed as not pressed.

3. The matter was taken up for trial. It was only at that point of time, the petitioner filed the present application in I.A.No.661 of 2015.

4. The learned trial Judge though made an observation saying that the appointment of Advocate Commissioner would help the Court to adjudicate the matter, however, dismissed it on the ground that there was gross negligence on the part of the petitioner. Feeling aggrieved, the petitioner has come up with this civil revision petition.

5. The learned counsel for the petitioner contended that the Trial Court having made an observation to the effect that the appointment of Advocate Commissioner would be helpful in finding out the alleged encroachment, has erred in dismissing the application solely on the ground of delay.

6. The factual matrix indicates that originally an Advocate Commissioner was appointed by the Trial Court. Thereafter, another Advocate Commissioner was appointed at the instance of the petitioner. The petitioner not pressed the application for commission at a later point of time and the same resulted in the dismissal of the said application. The suit is of the year 2004. The petitioner filed the present application in 2015 and that too during the course of trial. The learned trial Judge has made an observation that the petitioner slept over the issue for years together. The observation made by the learned

Principal District Judge, is now proved correct by the conduct adopted by the petitioner in filing the civil revision petition belatedly. The order was passed on 08.01.2016. The petition has come up for admission today i.e., 6 September 2016.

7. The earlier application was dismissed way back in the year 2004. There is no averment to show as to why petition for appointment of commission was not filed at an early point of time, more particularly before trial.

8. The learned Trial Judge exercised his jurisdiction by dismissing the application. The order passed by the learned Judge cannot be characterized as erroneous or suffers from illegality so as to exercise the jurisdiction of this Court under Article 227 of the Constitution of India. I do not find any merit in the civil revision petition.

9. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

06.09.2016

Index:Yes/No
svki

K.K.SASIDHARAN, J.

(svki)

To

The Principal District Munsif Judge,
Cuddalore.

C.R.P.(P.D.) No.2455 of 2016

06.09.2016