

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.11.2016
CORAM

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

C.R.P.(PD)No.2615 of 2016
and
C.M.P.No.13429 of 2016

1. Mr.G.Selvaraj
2. Mrs.S.Ambika

... Petitioners

Vs

1. Mrs.Suyamathi
2. Mr.Dhandapani
3. The Commissioner,
Cuddalore Municipality
Municipal Office Building,
Cuddalore - I.

... Respondents
4.

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the learned Principal District Munsif, Cuddalore, in I.A.No.328 of 2016, in I.A.No.405 of 2013, in O.S.No.91 of 2012, dated 14.06.2016.

For Petitioners : Mr.Kumar Raja
for M/s.Kumar and Baskar

For Respondents 1 and 2 : Mr.R.Gururaj

Respondent -3 : No appearance

ORDER

The petitioners filed a Suit for declaration and injunction. Before the trial Court, the petitioner filed an Application in I.A.No.405 of 2013, for appointment of an Advocate Commissioner to inspect the property along with a Surveyor.

2. The Application was allowed by the trial Court, resulting in appointing an Advocate Commissioner. The Advocate Commissioner failed to inspect the suit property. The trial Court, therefore, called upon the Advocate Commissioner to inspect the property and submit a report at the earliest. Even thereafter, report was not filed. Since the petitioners were not present on the date on which, I.A.No.405 of 2013, was taken up by the trial Court, the Application was dismissed. The petitioners, thereafter, filed I.A.No.328 of 2016 to restore the Application in I.A.No.405 of 2013. The

Application was dismissed by the trial Court with an observation that, in spite of sufficient time given, the petitioners have not taken the assistance of Surveyor to help the Advocate Commissioner to inspect the property and submit report. The said Order is under challenge in this Civil Revision Petition.

3. Heard the learned counsel appearing on behalf of the petitioners and the learned counsel for the respondents 1 and 2. None appears on behalf of the third respondent.

4. There is no dispute that the trial Court appointed an Advocate Commissioner, pursuant to the Application made by the petitioner in I.A.No.405 of 2013. The Advocate Commissioner was given the assistance of a Surveyor. It is therefore, the duty of the Court to see that necessary assistance is given by the Surveyor by making necessary endorsements in the warrant issued to the Advocate Commissioner. It is not the responsibility of the petitioner in an Application for appointment of Advocate Commissioner to get the Surveyor to assist the Advocate Commissioner. It is for the Court to make a clear endorsement in the warrant issued to the Advocate

Commissioner that he/she is permitted to take the assistance of Surveyor. The Advocate Commissioner is empowered to issue notice to the Surveyor to assist him for execution of warrant.

5. The factual matrix indicates that the trial Court posted the matter finally for filing report. The petitioners alone cannot be blamed for delay in filing the report by the Advocate Commissioner. The Court also owes a duty to call upon the Advocate Commissioner to file a report. In case, the Advocate Commissioner is not in a position to take the assistance of the Surveyor on account of the non-cooperation of the official, the Court could have directed them to render assistance.

6. The trial Court was not correct in dismissing the Application I.A.No.405 of 2013, and the subsequent Application in I.A.No.328 of 2016, filed for the purpose of restoring the Application in I.A.No.405 of 2013. I am, therefore, of the view that the impugned Order is liable to be set aside.

7. The order, dated 14.06.2016, is set aside. The Application in I.A.No.328 of 2016 stands allowed. The Application in I.A.No.405 of 2013 is

restored to file.

8. The learned Principal District Munsif, Cuddalore is directed to issue a fresh Warrant, directing the Advocate Commissioner to inspect the property in question, pursuant to the earlier order passed in I.A.No.405 of 2013. The Warrant should indicate that the Advocate Commissioner is permitted to take the assistance of Official Surveyor. The trial Court is further directed to fix an outer limit time for filing report by the Advocate Commissioner after inspection.

9. The Civil Revision Petition is allowed, as indicated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Index : Yes/No

07.11.2016

To

The Principal District Munsif, Cuddalore.

K.K.Sasidharan,J.,

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