

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

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

C.R.P.(PD)No.490 of 2016

and

C.M.P.No.2517 of 2016

S.Rose Violet

...Petitioner

Vs.

1. Manirajan
2. Punithavalli
3. Kuppan
4. Kalaiarasan
5. Logambal

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the learned District Munsif Chengalpattu, in I.A.No.317 of 2015, in O.S.No.155 of 2005, dated 29.07.2015.

For Petitioner : Mr.N.Manokaran

For Respondents 1to 3 : Mr.C.R.Rukmani

For Respondents 4 & 5 : No appearance

ORDER

The petitioner filed a Suit for declaration and injunction. In the said Suit, the petitioner filed an Application in I.A.No.247 of 2012, for appointment of an Advocate Commissioner to inspect the property, and report about its physical features. The Application was dismissed by the trial Court on the ground that, the attempt was to collect evidence. Thereafter, more particularly, after the commencement of trial, the petitioner filed another Application in I.A.No.317 of 2015, to appoint Advocate Commissioner, taking into account the contentions taken by the respondents and the string of questions put to P.W.1 to the effect that they are not in possession of the property owned by the petitioner. The Application was dismissed by the trial Court, primarily, on the ground that similar Application was dismissed earlier, and as such, the Application is barred by *res judicata*. Feeling aggrieved, the petitioner is before this Court.

2. The learned counsel appearing on behalf of the petitioner contended that it was only to clarify certain doubts. Taking into account the contentions taken by the respondents, fresh Application in I.A.No.317 of

2015 was filed by the petitioner for appointment of Advocate Commissioner. According to the petitioner, the Suit being one for declaration, it would be in the interest of both the parties to appoint an Advocate Commissioner to clarify the doubts so as to enable the trial Court to decide the matter on merits.

3. None appears on behalf of the respondents 4 and 5, inspite of printing their names in the cause list, after service.

4. There is no dispute that the petitioner earlier filed an Application in I.A.No.247 of 2012, for appointment of Advocate Commissioner. The Application was dismissed by the trial Court only on the ground that the intention was to collect to evidence. The trial Court recorded the evidence of P.W.1. Thereafter, the petitioner filed Application in I.A.No.317 of 2015, for appointment of Advocate Commissioner.

5. It is true that the earlier Application for appointment of Advocate Commissioner was dismissed by the trial Court. However, the core issue is as to whether the subsequent Application is maintainable, even when there is a case made out by the petitioner that such appointment would enable the trial Court to decide the matter on merits.

6. The Suit is one for declaration and injunction. The trial Court should be convinced about the identity of the property. It was only to clarify certain factual aspects, the petitioner filed the Application. I am of the view that the trial Court was not correct in dismissing the Application only on the ground that the earlier Application was dismissed.

7. In the result, the Order, dated 29.07.2015, is set aside. The trial Court is directed to appoint an Advocate Commissioner to inspect the property, pursuant to the Application in I.A.No.317 of 2015, after completion of evidence. In short, it is only after closing trial, Advocate Commissioner shall be appointed by the trial Court.

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

02.11.2016

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Index : Yes/No
Internet ; Yes/No

To
The District Munsif Chengalpattu,

K.K.Sasidharan,J.,

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