

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.711 OF 2016
AND CMP NO.3683 OF 2016

G.Janardhanampillai

... Petitioner

Versus

1.Neelakandan
2.Mahalakshmi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed in I.A.No.1809 of 2015 in O.S.No.1 of 2010 dated 01.02.2016 on the file of District Munsif Court, Ambattur.

For Petitioner : Mr.B.Vijay

For Respondents : Mr.G.Prakash

ORDER

This Civil Revision Petition is directed against the order dated 01.02.2016 in I.A.No.1809 of 2015 in O.S.No.1 of 2010, dismissing the application filed by the petitioner for appointment of Advocate

Commissioner to inspect the suit property and file a report.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner filed a suit in O.S.No.1 of 2010 before the District Munsif Court, Ambattur, praying for a judgment and decree of permanent injunction.

4. The suit was contested by the respondents by filing written statement. The respondents in the written statement contended that in case an Advocate Commissioner is appointed, it would reveal the falsity of the case pleaded by the petitioner.

5. The respondents filed an application in I.A.No.383 of 2011 for appointment of Advocate Commissioner. The Trial Court allowed the application. The Advocate Commissioner appears to have kept the matter pending and the same resulted in closing the application by the Trial Court.

6. The petitioner, after posting the matter for trial, filed an

application in I.A.No.1809 of 2015, for appointment of Advocate Commissioner to inspect the suit property. The application was dismissed by the Trial Court primarily on the ground that when the respondents filed the application in I.A.No.383 of 2011 for appointment of Advocate Commissioner, the petitioner filed a counter indicating that there is no dispute with regard to the identity of the suit property and that both the parties are enjoying their respective properties well within their boundaries and therefore, there is no need for appointment of Advocate Commissioner.

7. It is true that on an earlier occasion when the respondent filed the application in I.A.No.383 of 2011, the petitioner opposed the appointment of Advocate Commissioner on the ground that there is no dispute with regard to the identity of the suit property. The said reason alone cannot be a ground to reject the request made by the petitioner for appointment of Advocate Commissioner. The documents on record clearly indicates that both the parties wanted appointment of Advocate Commissioner.

8. The respondents made a request earlier by filing the

application in I.A.No.383 of 2011 for appointment of Advocate Commissioner. It was not on account of the default committed either by the petitioner or by the respondent, the Trial Court dismissed the application in I.A.No.1809 of 2015. In view of the contention taken by the parties in their respective pleadings, I am of the view that the Trial Court was not correct in dismissing the application.

9. In the result, the order dated 01.02.2016 in I.A.No.1809 of 2015 is set aside. The application in I.A.No.1809 of 2015 is allowed.

10. The learned Trial Judge is directed to appoint an Advocate Commissioner to inspect the suit property in question after fixing outer time limit for submission of report.

11. It is open to the parties to submit work memo to the Advocate Commissioner during the course of inspection.

12. The learned Trial Judge is directed to dispose of the civil suit in O.S.No.1 of 2010, on merits and as per law, as expeditiously as possible and in any case, on or before 31 March 2017.

13. The Civil Revision Petition is allowed as indicated above.

No costs. Consequently, connected miscellaneous petition is closed.

17.11.2016

TK

To

The District Munsif Court
Ambattur.

K.K.SASIDHARAN, J.

TK

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