

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.747 of 2016

&

C.M.P.No.4120 of 2016

1.Miss.Neoline Pushpabai Lazerus
Rep. By her power agent
G.Lingamurthy
No.5, Yesudaiyan Street
Pallikaranai, Chennai – 601 302

2. Mrs.G.Anja

... Petitioners

vs.

1.G.City Babu
2.Yasodha Muralidhran

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Docket Order dated 11.01.2016 and made in unnumbered I.A.No. of 2015 in I.A.No.1238 of 2010 in O.S.No.451 of 1998 on the file of Principal District Munsif, Alandur.

For Petitioner : Mr.S.Balasubramanian

ORDER

The plaintiffs in O.S.No.451 of 1998 on the file of the Principal District Munsif, Alandur, are the defendants in O.S.No.409 of 1998 pending on the

file of the same Court. Both the cases are being tried together and common evidence was recorded in O.S.No.451 of 1998 for both the cases. After completion of evidence on both sides, when the matter stood posted for arguments, the revision petitioner filed interlocutory applications to re-open the case, to issue witness summons to the Tahsildar, to appoint an Advocate Commissioner and to examine the Taluk Surveyor as a witness. The application for appointment of a Commission , namely I.A.No.1238 of 2010 came to be allowed nearly after two years, namely on 28.06.2012.

2. Thereafter, for about three years, the petitioners did not evince interest in making the Advocate Commissioner to execute the commission warrant and submit a report. The Court itself took note of the failure on the part of the Commissioner and listed the matter on several dates directing the Commissioner to file his report. Since the Advocate Commissioner did not file his report and he did not appear on all those dates, a specific direction was issued by the trial Court to the Advocate Commissioner to appear on 24.07.2015, 29.07.2015, 04.08.2015, 06.08.2015 and 10.08.2015. On all those days, the Advocate Commissioner did not appear. At last, on 21.08.2015, the Advocate Commissioner reported his inability to inspect the property due to the alleged reason that the Taluk Surveyor was not available. What were the steps taken by the Advocate Commissioner to get the assistance of the Taluk Surveyor was not made known. The revision petitioners, who got an order of appointment of a Commissioner in 2010

when the matter stood listed for hearing arguments simply kept quite for more than 5 years without filing a memo or an application for the removal of the Advocate Commissioner for his inaction and appointment of a fresh Commissioner. They have also not produced any document to show what are the steps taken by them to get the Advocate Commissioner to do his job as directed by the Court below.

3. Meanwhile, this Court considering the enormous delay at the stage of arguments, directed the trial Court to dispose of the interlocutory applications within a time frame. Only thereafter, steps were taken not by the revision petitioners, but by the trial Court itself to persuade and compel the Advocate Commissioner to execute the warrant issued to him. Even thereafter, the revision petitioners did nothing, which gave an impression to the trial Court that the petitioners were not interested in getting the warrant of the Commission executed and on the other hand, the intention of the petitioners was to drag on the case. Accordingly, the learned trial Judge closed I.A.No.1238 of 2010 by an order dated 21.08.2015, taking note of the fact that the revision petitioners did nothing towards the expeditious disposal of such petition. After such closure, the revision petitioners chose to file the unnumbered interlocutory application on 01.09.2015 to re-open the petition I.A.No.1238 of 2010.

4. The learned trial Judge, after considering the facts and circumstances under which such a petition came to be filed, came to the conclusion that the petition was nothing but an attempt to prolong the case further and rejected the said application by the impugned order dated 11.01.2016. It is as against the said order, the present Civil Revision Petition has been filed.

5. This Court does not find any defect or infirmity in the said order, correctable by this Court in exercise of its power of superintendence available under Article 227 of the Constitution of India. The very attempt to prolong the case indefinitely has been rightly dealt with by the Court below by rejecting the petition. Hence, this Court does not feel that it is a fit case in which this Court can interfere. Hence, the revision deserves to be dismissed at the threshold.

In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

08.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

The Principal District Munsif
Alandur

P.R.SHIVAKUMAR.J.,
gpa

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