

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) Nos.788 and 789 of 2016
and
C.M.P.Nos.4363 and 4364 of 2016

C.R.P.(PD) No.788 of 2016

1.D.Vasanthamani
2.D.Menakadevi
3.D.Sudha
4.Subbathal
Petitioners

...

vs.

1.M.S.Chinnasamy @ Duraisamy
2.K.S.Ramasamy
3.S.Aruchamy
4.Kamalam
Respondents

...

C.R.P.(PD) No.789 of 2016

1.D.Vasanthamani
2.D.Menakadevi
3.D.Sudha
4.Subbathal

... Petitioners

VS.

P.Duraisamy
Respondent

...

Civil Revision Petition No.788 of 2016 filed under Article 227 of the Constitution of India against the docket order dated 19.2.2016 passed in I.A.No.37 of 2016 in O.S.No.29 of 2016 on the file of the District Munsif, Coimbatore.

Civil Revision Petition No.789 of 2016 filed under Article 227 of the Constitution of India against the docket order dated 5.1.2016 passed in I.A.No.39 of 2016 in O.S.No.31 of 2016 on the file of the District Munsif, Coimbatore.

Mr.I.Abrar and Abdullah : for petitioners in both
the

Civil Revision Petitions

Mr.G.K.Muthukumar : for respondents in both
the

Civil Revision
Petitions

COMMON ORDER

These two Civil Revision Petitions are directed against the order dated 19.2.2016 and 5.1.2016 in I.A.No.37 of 2016 and I.A.No.39 of 2016, respectively, in O.S.Nos.29 of

2016 and 31 of 2016, whereby and whereunder the learned District Munsif, Coimbatore, appointed Advocate Commissioner to inspect the suit properties and submit a comprehensive report.

2. The challenge is primarily on the ground that the learned Second Additional Subordinate Judge, Coimbatore, earlier appointed an Advocate Commissioner in I.A.No.718 of 2015 in O.S.No.1496 of 2015 and as such, there is no need for appointing another Commissioner in the present suits in O.S.Nos.29 and 31 of 2016.

3. The respondents justified the impugned order passed by the Trial Court on the ground that the property in O.S.No.1496 of 2015 is not the same in the present Suits in O.S.Nos.29 and 31 of 2016. According to the respondents, Advocate Commissioner was appointed in I.A.No.718 of 2015 in O.S.No.1496 of 2015 to inspect the property shown in the schedule to the plaint and he had no occasion to inspect the

properties shown in the schedule to the present suits.

4. I have heard the learned counsel for the petitioners and the learned counsel for the respondents.

5. After hearing the learned counsel for the parties at length, I am of the view that it would be in the interest of all the parties in case that the two suits are clubbed now and appoint the very same Commissioner who inspected the property in O.S.No.1496 of 2015, to inspect the properties shown in the schedule to the suits in O.S.Nos.29 and 31 of 2016 and submit a comprehensive report.

6. The suits in O.S.Nos.29 and 31 of 2016 are withdrawn from the file of learned District Munsif Court, Coimbatore and are transferred to the file of Second Additional Subordinate Court, Coimbatore, for disposal, along with the pending suit in O.S.No.1496 of 2015.

7. The order passed by the learned Trial Judge in I.A.Nos.37 and 39 of 2016 are set aside for the purpose of passing fresh orders appointing the very same Commissioner who was earlier appointed in I.A.No.718 of 2015 in O.S.No.1496 of 2015 to inspect the suit properties afresh.

8. In the result, the order impugned in this Civil Revision Petitions are set aside. The Applications in I.A.No.37 of 2016 in O.S.No.29 of 2016 and I.A.No.39 of 2016 in I.A.No.31 of 2016 are restored to file.

9. The learned Second Additional Subordinate Judge, Coimbatore, is directed, after re-numbering the Civil suits, to appoint the very same Commissioner, who was appointed in O.S.No.1496 of 2015, for the purpose of inspecting the suit properties. It is open to the parties to file work memo to the Advocate Commissioner.

10. It is open to the parties to place reliance on the

report submitted by the Advocate Commissioner in I.A.No.718 of 2015 in O.S.No.1496 of 2015, for the purpose of proving the factual position prevailing as on the date on which the Advocate Commissioner inspected the property in the said suit. The report to be submitted by the Advocate Commissioner in I.A.Nos.29 and 31 of 2016 shall be the report to be looked into by the Court for all other purposes.

11. The Trial Court must ensure that reasonable notice is issued by the Advocate Commissioner to the parties before inspecting the suit properties.

12. The Civil Revision Petitions are disposed of, with the above direction. No costs. Connected Miscellaneous Petitions are closed.

16.11.2016

Index : yes / no

Internet :yes / no

asvm

To

- 1.The Second Additional Subordinate Judge,
Coimbatore.
- 2.The District Munsif Court,
Coimbatore.

K.K.SASIDHARAN, J.

(asvm)

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