

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.3214 of 2013

Chockalingam

.. Petitioner

Vs.

Gurusamy Temple,
Rep. by its Executive Committee,
Old Village Savadi Street,
Sulur Town and Taluk.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal order dated 30.11.2011 passed in I.A.No.1299 of 2011 in I.A.No.1174 of 2005 in O.S.No.108 of 2000, on the file of the District Munsif Court, Palladam.

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For Petitioner : Mr.N.Damodaran

For Respondent : No Appearance

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decretal order dated 30.11.2011 in I.A.No.1299 of 2011 in I.A.No.1174 of 2005 in O.S.No.108 of 2000 on the file of the District Munsif Court, Palladam.

2.The instant civil revision petition is filed by the plaintiff as against the dismissal order of his re-open application. The revision petitioner as plaintiff filed a suit against the respondent herein in O.S.No.108 of 2000 before the learned District Munsif Court, Palladam for permanent and mandatory injunction.

3.Pending suit, the revision petitioner took out an application in I.A.No.1174 of 2005 to appoint an Advocate Commissioner to measure the suit property with the help of surveyor. After enquiry, the Learned trial Judge was pleased to appoint an Advocate Commissioner by order dated 31.03.2006. According to the revision petitioner, the learned Advocate Commissioner inspected the suit property along with surveyor, but not filed report for want of surveyor's plan. The learned Advocate Commissioner has taken time to file his report for want of

plan from the surveyor. Since the learned Advocate Commissioner failed to file the report, the petition in I.A.No.1174 of 2005 was closed on 05.04.2011.

4.It is the further case of the revision petitioner that since the surveyor failed to furnish his plan with report either to the commissioner or to the Court the revision petitioner sent notice to the surveyor on 16.10.2010 and the same was received. Where upon the surveyor has not produced the report. Hence the revision petitioner has taken out an application on 28.02.2011 to issue summon to the surveyor to produce the true and proper plan to the Court. The said application was returned and the petitioner herein failed to represent the same in time and in the meantime, commission application was closed by the trial Court on 05.04.2011. Therefore, the revision petitioner filed I.A.No.1299 of 2011 to reopen the I.A.No.1174 of 2005 and to receive the commissioner report. The 1st respondent herein said no objection to allow the re-open petition. However, the Learned trial Judge dismissed the same by order dated 30.11.2011, which is impugned in this Civil Revision Petition.

5.I heard Mr.N.Damodaran, learned counsel appearing for the

revision petitioner and there is no representation on the side of the respondent, despite service of notice and perused the entire records.

6.Considering the submission of the learned counsel for the petitioner, this Court would be able to see that the revision petitioner's commission application in I.A.No.1174 of 2005 was allowed. Followed by the same, the commissioner has measured the suit property with the assistance of Taluk surveyor. Thereafter, it seems that the learned Advocate Commissioner taken considerable time to file his report for want of surveyor report and plan, but the Commissioner has not filed his report.

7.It is seen from records that the revision petitioner filed application in I.A.No. of 2011 on 28.02.2011 under Order 16, Rule 10 CPC to summon the surveyor and to produce the plan and report to the Court. The said application filed by the revision petitioner was returned and the same was not represented in time. In the meantime, the trial Court has closed the appointment of Advocate Commissioner application 05.04.2011. Therefore the petitioner has filed the present application to re-open I.A.No.1174 of 2005.

8.From the perusal of the trial Court order, it seems that the learned trial judge proceed to dismiss the re-open petition on the footing that the petitioner herein has not taken steps to represent Order 16 Rule 10 CPC application. Further, the trial Court held that the revision petitioner should have filed the re-open petition immediately after the closure of I.A.No.1174 of 2005 which was closed on 05.04.2011 and the re-open petition was filed only on 19.07.2011. It is true that the revision petitioner should have filed re-open petition at the earliest immediately after the closure of I.A.No.1174 of 2005. However, the delay is also not an ex ordinary one in the mind of this Court. Further, the revision petitioner has stated in his re-open affidavit that he is represented the Order 16, Rule 10 CPC petition along with the re-open application, but the trial Court has not considered the same.

9.The trial Court having appointed Advocate Commissioner to measure the suit property and the learned Commissioner also measured the suit property with the help of surveyor, but the application was closed without getting the report from the Commissioner. Under such circumstances, the very purpose of the appointment of Advocate Commissioner will be defeated.

10. In fact, once the Court appointed the Advocate Commissioner and he has not filed his report along with the plan, it is the duty of the Court to summon the Advocate Commissioner and get the report, but without doing the same, the learned Judge cannot simply close the application of Advocate Commissioner on 05.04.2011. In my view, the order of the learned Judge is totally wrong and in accordance with any law.

11. Hence, this Court considering the overall facts and circumstances of the case, deem it fit and proper to allow the re-open application filed by the revision petitioner and this Court warranting necessity for the interference in the order in I.A.No.1299 of 2011, dated 30.11.2011 and the same is liable to be set aside.

12. In the result:

a) this Civil Revision Petition is allowed and the order and decree dated 30.11.2011 made in I.A.No. 1299 of 2011 in I.A.No. 1174 of 2005 in O.S.No. 108 of 2000 on the file of the District Munsif Court, Palladam is hereby set aside on payment of cost of Rs.2000/- to be paid by the

revision petitioner to the respondent herein, within a period of 2 weeks from the date of receipt of copy of this order;

b) on payment of cost memo being filed, the trial Court is directed to re-open I.A.No. 1174 of 2005 in O.S.No.108 of 2000;

(c) the trial Court is directed to permit the petitioner/plaintiff to take appropriate steps to summon the surveyor and get the plan within a period of four weeks thereafter;

(d) the learned Judge is hereby directed to summon the Advocate Commissioner and direct the Commissioner to file report within the time limit of four weeks;

(e) on filing the report and plan, the trial Court is directed to take up the suit on day to day basis, without giving any adjournment to either parties and to dispose the same within a period of two months thereafter, since

the suit is for the year 2000. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit within the time limit fixed by this Court. No costs.

07.12.2016

Note: Issue order copy on 26.07.2017

Internet: Yes

Index: Yes

vs

To
The District Munsif Court,
Palladam.



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M.V.MURALIDARAN, J.

VS



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