



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.2187 of 2015

and

M.P. (MD) .No.1 of 2015

WEB COPY

1.Soudamini Amma

2.Oormila Devi

...Petitioners

Vs.

1.Lawrence John

2.Kunjamma

3.Titus John

4.Dharmaraj

5.Sajitha Kumari

6.Sreedharan

7.Helan Hepsy Boy

8.Geethakumari @ Subha Devi

9.Prasanth Kumar

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decretal order dated 30.06.2015 made in I.A.No.123 of 2015 in O.S.No.422 of 2001 passed by the learned II Additional District Munsif, Kuzhithurai.

For Petitioners	:Mr.K.N.Thampi
For R1	:Mr.B.Christopher
For R2 to R8	:No appearance
For R9	:Dispensed with

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 30.06.2015 passed in I.A.No.123 of 2015 in O.S.No.422 of 2001 by the learned II Additional District Munsif, Kuzhithurai.

2.The petitioners are the defendants 3 and 9 and the first respondent is the plaintiff in the suit. The suit in O.S.NO.422 of 2001 filed for partition. An ex-parte preliminary decree was passed on 26.07.2006. The first respondent filed I.A.No.98 of 2007 for passing of final decree in O.S.No.422 of 2001. The Advocate Commissioner was appointed and he inspected the property, after issuing notice to all the parties and filed his report. The petitioners filed I.A.No.475 of 2009 for a direction to the Advocate Commissioner to look into the memo of instructions filed by the petitioner and execute the warrant issued to him accordingly. In the said I.A, the trial Court ordered summons to 11th defendant and directed the petitioner to pay batta. The petitioners failed to pay batta. Therefore, the said application was dismissed on 04.02.2015. The petitioners filed I.A.No.123 of 2015 to restore I.A.No.475 of 2009. According to the petitioners, due to the old age of the first petitioner, she could not meet advocate and give instructions.



3.The first respondent and other defendants filed counter affidavit to the effect that the petitioners did not serve any memo of instructions to the Advocate Commissioner at the time of his inspection. The petitioners have not given any reason for not giving memo of instructions to the Advocate Commissioner at the time of inspection. The petitioners have sold some portion of the property to strangers and to locate the same, only she filed this petition. The petitioners did not take summons to 11th defendant till 04.02.2015 in I.A.No.475 of 2009. Only to drag on the proceedings, the petitioners have filed this application and prayed for dismissing the application.

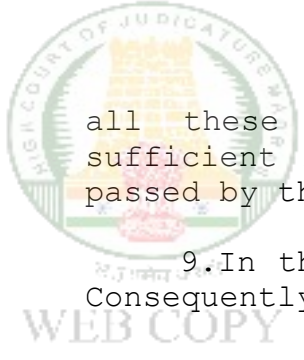
4.The learned Judge considered all the facts and materials on record, dismissed the I.A. Against the said order of dismissal, the present civil revision petition is filed.

5.The learned counsel for the petitioners submitted that an application in I.A.No.123 of 2015 is only to restore I.A.No.475 of 2009, which was dismissed for default. Instead of considering the said application on merits, the learned Judge has decided I.A.No.475 of 2009 without giving any opportunity to the petitioners. The reason given by the learned Judge that the petitioners can examine the Advocate Commissioner to substantiate their case, would lead to duplication and multiplication of judicial work. The learned Judge failed to see that the petitioners paid process fee in I.A.No.475 of 2009 along with petition for restoration of the said I.A. The learned Judge erred in holding that the petition has been filed only to drag on the proceedings.

6.The first respondent filed counter affidavit with vacate stay petition. The first respondent stated that the petitioners purposely did not take steps to serve 11th defendant. The petitioners have filed I.A.No.327 of 2015 to scrap the report and plan of the Advocate Commissioner and the same is pending. This Court by order dated 14.10.2015, directed the respondents not to pass final decree for a period of two weeks. If final decree is not passed, the first respondent would be put to irreparable loss and hardship and therefore, prayed for dismissal of C.R.P.

7.I have heard Mr.K.N.Thampi, learned counsel appearing for the petitioner and Mr.B.Christopher, learned counsel appearing for the first respondent and carefully perused the entire materials on record.

8.The petitioner filed I.A.No.475 of 2009 seeking for a direction to the Advocate Commissioner to consider the memo of instructions and to inspect the property and to note down the physical features, as per memo of instructions filed by the petitioners. At the time of inspection on 25.07.2009, the second petitioner was present. The Advocate Commissioner inspected the property after issuing notice to all the parties and counsel. The petitioners have not given any memo of instructions to the Advocate Commissioner, at that time. In the application in I.A.No.475 of 2009, they have not explained as to why they did not serve any memo of instructions on the Advocate commissioner. The reason given by the petitioners in I.A., is not valid and acceptable one. The petitioners also filed I.A.No.327 of 2015 to scrap the report and plan filed by the Advocate Commissioner, which is pending. The learned Judge considering



all these aspects, dismissed the application by giving valid and sufficient reasons. There is no irregularity or illegality in the order passed by the learned Judge.

9. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
The II Additional District Munsif,
Kuzhithurai.

+1cc to M/s.K.N.Thambi, Advocate in SR.16357
+1cc to M/s.B.Christopher, Advocate in SR.16227

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ns

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