

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

CRP(PD)No.1124 of 2017

and CMP.No.5403/2017

Jothi Arumugam

....Petitioner

vs.

1.P.Natarajan
2.N. Prabhu
3.Gandhimathi
4.Dhanalakshmi
...Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.02.2017 made in I.A.No.53 of 2017 in O.S.No.35 of 2015 on the file of the Principal District Munsif Court, Erode.

For Petitioner : Mr. N. Manokaran

For Respondents : Mr.S.Kaithamalai Kumaran

O R D E R

Plaintiff in the trial court is the revision petitioner before me. The suit has been filed in the trial court with prayers for declaration of title, consequential injunction and the plaint prayer is predicated primarily on the plea of oral exchange.

2. In the course of the trial of the suit, an application being IA.No.53/2017 was taken out by the plaintiff under Order XXVI Rule 9 CPC, 1908 (hereinafter referred to as 'CPC' for the

sake of brevity), praying for appointment of an Advocate Commissioner.

3. The prayer in the said IA, is for appointment of an Advocate Commissioner to visit the suit property along with the competent Surveyor measure the suit property in dispute fix the boundary line and file a detailed report with plan.

4. In this prayer 7 survey Nos, have been cited and they are as follows:

R.S.No.266/1B

R.S.No.266/2

R.S.No.266/3

R.S.No.266/4

R.S.No.266/5

R.S.No.266/10A

R.S.No.266/10B

5. The learned Trial Judge, after full contest in the Interlocutory Application for appointment of an Advocate Commissioner dismissed the same vide order dated 20.02.2017 primarily on the ground that in another suit being O.S.No.306/2012, similar application vide I.A.No.81/2016 was

taken out, the same was dismissed carried in revision to this court by way of CRP.No.1121/2016 that was also withdrawn and given quietus.

6. In the course of hearing, the proceedings pertaining to the above said CRP.No.1121/2016 and the above said IA out of which the same arises were placed before this court.

7. It is seen that those proceedings pertain to 5 Survey Nos. viz., RS.Nos.266/1B, 266/4 , 266/6, 266/10A, 266/10 B.

8. Faced with this situation, Mr.N. Manokaran learned counsel for the revision petitioner would submit that in the instant suit, the Advocate Commissioner application can be restricted to RS.No.266/3 alone and not the other RS.Nos.

9. As RS.No.266/3 is not subject matter of the earlier Advocate Commissioner application in the earlier suit viz., Interlocutory Application in O.S.No.306/2012, I am inclined to set aside the order of the trial court, which is being sought to be revised before me.

10. While setting aside the order, it is made clear that the Advocate Commissioner, who shall now be appointed shall be

given directions to visit the suit property along with a competent surveyor to measure the suit property with the aid of revenue records to fix the boundary line and file a detailed report along with plan with regard to R.S.No.266/3 alone and not the other RS.Nos.

11. Some more submissions were made with regard to the admission of 2nd defendant, who deposed as DW2 wherein the 2nd defendant in cross examination has stated that he has no objection for such a course being i.e., an Advocate Commissioner being appointed.

12. In the light of the fact that the Civil Revision Petition is being disposed of, on a short point, I refrain from going into that aspect of the matter.

Civil Revision Petition is disposed of with the following directions:

a) Order dated 20.02.2017 made in I.A.No.53/2017 in O.S.No.35/2015 on the file of the learned Principal District Munsif Court, Erode, is set aside.

b) the trial court shall appoint an Advocate Commissioner with a suitable direction as stated supra in this order with regard to R.S.No.266/3 admeasuring an extent of 13½ cents. It is R.S.No.266/3 in Vilakkethi village, in Sivagiri Sub-Registrar

Office, Erode District. In other words, the suit property as found in the plaint in O.S.No.35/2015.

c) The Advocate Commissioner so appointed shall be directed to restrict his report to RS.No.266/3 alone as aforesaid.

13. Both the learned counsel, by consent state that they will be able to have the main suit itself disposed off within three months from the date of filing of report and plan by the Advocate Commissioner. On such submission, trial court is directed to hear the suit as expeditiously as possible and dispose of the suit within three months from the date of filing of report and plan by the Advocate Commissioner.

14. It is made clear that time frame is fixed not only on the basis of consent but also on the basis of the fact that there are two other suits pertaining to the same issue, the earliest suit being O.S.No.306/2012.

Civil Revision Petition is disposed of on the above terms. No costs. Consequently, connected civil miscellaneous petition is closed.

03.04.2017

Speaking / Non- speaking order
Index :Yes/No
gv

M.SUNDAR. J.,

To
The Principal District Munsif Court,
Erode.

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03.04.2017

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