

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1660 of 2017
and CMP.No.7780 of 2017

Vijayapoorani

Rep. By Power of Attorney Agents

1.Jegadeeswaran

2.Arul

.. Petitioner

Vs

1.Senthamarai

2.Jaya

3.Palaniammal

4.Ezhilarasi

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 19.12.2016 made in I.A.No.241 of 2011 in O.S.No.72 of 2006 on the file of the II Additional District Munsif Court, Salem.

For Petitioner : Mr. V.Sekar

ORDER

The Civil Revision Petition has been filed praying the order dated 19.12.2016 made in I.A.No.241 of 2011 in O.S.No.72 of 2006 on the file of the II Additional District Munsif Court, Salem.

2. The petitioner is the plaintiff and the respondents are the

defendants in O.S.No.72 of 2006 on the file of II Additional District Munsif, Salem. The petitioner filed a suit for declaration and for mandatory injunction to direct the respondents to demolish the building constructed by the respondents in the suit property, and for a permanent injunction restraining the respondents not to interfere or disturb the petitioner's peaceful possession and enjoyment of the suit property. The petitioner filed an application in I.A.No.182 of 2006 in O.S.No.72 of 2006 before the I Additional District Munsif Court, Salem, for appointment of an Advocate Commissioner to inspect and measure the suit property. Subsequently, the said application was transferred from the I Additional Munsif Court, Salem to II Additional District Munsif Court, Salem and re-numbered as I.A.No.241 of 2011 in O.S.No.72 of 2006. Before the said application was transferred to the file of the II Additional District Court, Salem, the learned I Additional District Salem, has passed an order dated 08.3.2006 for appointment of Advocate Commissioner. The said application was pending from the year 2006 for production of Advocate Commissioner's report. It was even once dismissed for non-appearance of the petitioner in the year 2012 and was restored to file in the year 2013. It was then adjourned several times. Thereafter, the said application was closed vide order of the trial Court dated 11.3.2014, on the ground that since no report was filed by the Advocate Commissioner, the warrant of the Commissioner could not be extended. Later, a petition in I.A.No.135 of 2014 was

filed to re-open the said application and the same was allowed vide order dated 10.4.2014. Thereafter, the Advocate Commissioner filed a memo seeking additional remuneration of Rs.10,000/- on the ground that further visits are required by him along with the Village Administrative Officer and Surveyor, to identify the suit property. The trial Court has taken into consideration the memo filed by the Advocate Commissioner and directed the petitioner to pay a sum of Rs.10,000/- as additional remuneration to the Commissioner, with a direction to the petitioner to file petition under Section 83 of Civil Rules of Practice. The petitioner also filed a petition under Section 83 of Civil Rules of Practice. Thereafter, the petitioner filed a petition under Order XXVI Rule 9 of CPC and prayed for extension of time for filing a report. The trial Court, vide order dated 19.12.2016 had closed the said petition, which reads as follows :

"Commr. Pet. No petn. u/s.83 CRP filed. Witness bata filed by Commissioner and returned. This Court find no reason to extend the time. Hence time no extended for filing report u/s. Order XXVI Rule 18-B CPC petition is closed."

3. Against the order dated 19.12.2016 passed by the learned II Additional District Munsif Court, Salem, the petitioner has filed the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner submitted that the petitioner had taken all steps for execution of warrant and also paid the additional remuneration to the Advocate Commissioner, as ordered by the trial Court. The petitioner also paid batta to the Revenue Officials for production of old FMB plan. It is stated by the petitioner that the delay in filing the report is only due to the failure on the part of the Revenue Officials to produce the old FMB plan and she is no way connected with the issue. Hence, the petitioner is before this Court in this revision praying to set aside the order dated 19.12.2016 passed by the trial Court.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. On perusing the materials available on records, it is seen that the application for appointment of Advocate Commissioner is pending since 2006. Even though the Advocate Commissioner was appointed as early as 08.3.2006, no report was filed by the Commissioner even after 11 years. According to the petitioner, the delay in filing the report had occurred only due to the failure on the part

of the Revenue Officials in producing the old FMB map. But, this Court finds that there is nothing on record to show that the petitioner has taken any effective steps for a direction from the Court to direct the Revenue Officials to produce the FMB revenue records, including FMB sketch. Taking into consideration the facts and circumstances of the case, this Court is of the view that the learned Judge has rightly closed the application in I.A.No.241 of 2011 filed by the petitioner. There is no illegality or irregularity in the order dated 19.12.2016 passed by the learned II Additional District Munsif, Salem in I.A.No.241 of 2011 warranting interference by this Court.

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

05.06.2017

ds

Speaking Order/Non-speaking Order
Index : Yes / No

To:

The II Additional District Munsif Court
Salem.

V.M.VELUMANI,J

ds

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