

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.285 of 2014
& M.P.No.1 of 2014

1.Palani Gounder
2.Karthi
3.Kumar
4.Kunju Gounder

.. Petitioners

Vs.

Siddha Gounder

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.11.2013 made in I.A.No.234 of 2013 in I.A.No.1055 of 2011 in O.S.No.299 of 2011 on the file of the II Additional District Munsif Court, Bhavani.

For Petitioner : M/S.Zeenath Begum

For Respondent : Mr.N.Manokaran

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 11.11.2013 made in I.A.No.234 of 2013 in I.A.No.1055 of 2011 in O.S.No.299 of 2011 on the file of the II Additional District Munsif Court, Bhavani.

2. The petitioners are defendants 1 to 4 and respondent is the plaintiff in O.S.No.299 of 2011 on the file of the Principal District Munsif Court, Bhavani. The respondent filed said suit for declaration and injunction. Along with the suit, respondent filed I.A.No.1055 of 2011 under Order XXVI Rule 9 and Section 151 C.P.C., for appointment of Advocate Commissioner with a direction to him to note down the existing physical features in and around the suit property and to file his report. Advocate Commissioner was appointed, she inspected the suit property and filed her report on 28.02.2012. The petitioners did not file any objection to the report of the Advocate Commissioner. Trial commenced, respondent filed proof affidavit and when the suit was posted for cross-examination of P.W.1 by the petitioners, after taking number of adjournments, the petitioners filed present I.A.No.234 of 2013 for reissue of

warrant of commission to the same Advocate Commissioner or issuance of warrant of commission to another advocate.

3. According to the petitioners, in the report filed by the Advocate Commissioner, physical features of the suit property has been wrongly mentioned and plan of the Advocate Commissioner is against the report. Earlier Advocate Commissioner has been appointed as Judicial Magistrate and hence, prayed for issuance of warrant of commission to another Advocate.

4. The respondent filed counter affidavit and contended that Advocate Commissioner filed her report with correct particulars after inspecting the suit property on 28.02.2012 itself. The petitioners have not filed any objection to the report even after ample opportunity was given by the learned Judge to the petitioners to file objection. The suit was listed for trial on 14.08.2013 and trial was commenced. The respondent examined himself as P.W.1 in chief. The counsel for petitioners did not cross-examine P.W.1 even after one month of filing proof affidavit. Without scraping previous report filed by the Advocate commissioner, petitioners cannot seek reissue of warrant of commission.

5. The learned Judge considering the averments made in the

affidavit, counter affidavit, provisions under Order XXVI Rule 10(3) C.P.C. and judgments relied on by the respondent, dismissed the application.

6. Against the said order of dismissal dated 11.11.2013 made in I.A.No.234 of 2013, the present Civil Revision Petition is filed by the petitioners.

7. Heard both sides and perused the materials available on record.

8. From the materials available on record, it is seen that the petitioners have filed present application for reissue of warrant of commission on the ground that Commissioner's report contains wrong physical features and plan filed by the Advocate Commissioner is contrary to report filed by her. The petitioners did not file any objection to the Commissioner's report even after ample opportunity was given to them. After considerable delay, the petitioners filed objection to the report of the Advocate Commissioner. When the petitioners filed present application, they have not initiated any proceedings for scrapping the report of the Advocate Commissioner. Unless the previous report of the Advocate Commissioner is scrapped, the warrant of commission cannot be reissued to the same Advocate or to another advocate.

9. It is well settled that report of the Advocate Commissioner is not a final piece of evidence to decide the issue in the suit. It is for the Court either to accept or reject the report. The petitioners have also right to cross-examine the Advocate Commissioner. In the present case, the petitioners have filed present application after commencement of trial and after one year of filing report by the Advocate Commissioner, without filing objection.

10. The learned Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 11.11.2013.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No

kj

06.12.2017

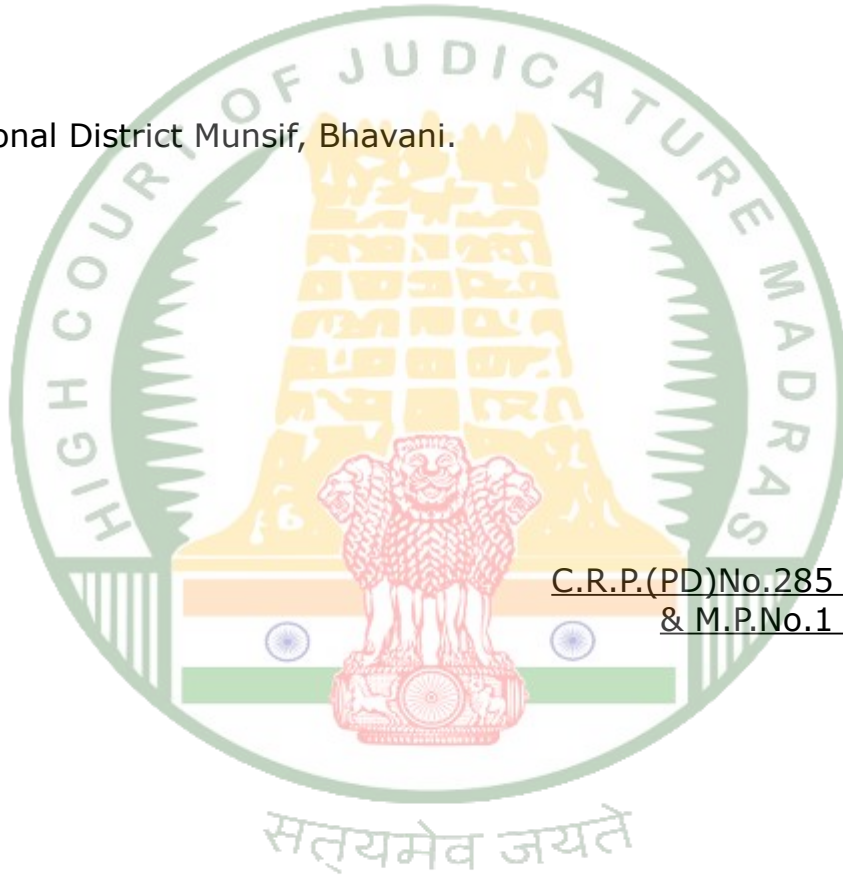
WEB COPY

V.M.VELUMANI, J.

kj

To

II Additional District Munsif, Bhavani.



C.R.P.(PD)No.285 of 2014
& M.P.No.1 of 2014

WEB COPY

06.12.2017