

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.489 of 2017  
and  
C.M.P.No.2447 of 2017

Rani Ammal

.. Petitioner

Vs.

1. Sri Devi  
2. Ramesh

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order, dated 29.11.2016 made in I.A.No.516 of 2016 in O.S.No.53 of 2016 on the file of the District Munsif Court, Panruti.

For petitioner : Mr.N.Suresh

ORDER

The revision is filed against the order dismissing the application to appoint an Advocate Commissioner to inspect the 'B' schedule property and note down the construction made therein and to file report and plan. Earlier, the suit was filed for declaration of title and for mandatory injunction for removal of unlawful construction carried out in the 'B'

schedule suit property. Along with the suit, I.A.No.240 of 2016 was filed for interim injunction restraining the defendants from putting up further construction in 'B' schedule property, which was also granted on 11.04.2016. Now, the case of the revision petitioner/plaintiff is that despite the order of injunction, the defendants are putting up further construction. Therefore, the Commissioner has to be appointed to note down the further construction put up by the defendants after the grant of interim injunction. The said application was dismissed by the trial Court on the ground that the Commissioner appointed earlier and the report filed by him, is suffice to decide the case.

2. When it is the specific case of the plaintiff that inspite of the order of interim injunction, the defendants have proceeded with further construction by flouting the order of the Court, he should have filed an application for contempt and then should have asked for appointment of Advocate Commissioner to note down the further constitution put up by the defendants after the order of interim injunction. But, without doing the same, the application to note down the physical features by the Commissioner is filed for the second time by the plaintiff, which was rightly dismissed by the trial Court.

3. In view of the above facts, it is open for the revision petitioner/plaintiff to file an application for contempt against the defendants

for flouting the order of the Court and then to file an application to appoint an Advocate Commissioner to note down the physical features to find out the additional construction made subsequent to the order of interim injunction. The revision petitioner/plaintiff is directed to file such applications within a period of one month from the date of receipt of a copy of this order and on filing such applications, appropriate orders shall be passed by the trial Court, on merits and in accordance with law.

4. With the above observations and directions, the Civil Revision Petition is dismissed. No costs. C.M.P. is closed.

15.02.2017

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Copy to

The District Munsif, Panruti.

PUSHPA SATHYANARAYANA, J

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