

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.774 of 2017

and C.M.P.No.3833 2017

Rm.Meyyappan

... Petitioner

v.

1. Mrs.Leena Reheja
W/o.Shri Shyamal

2.Mr.Shyamlal

3. Mr.Deepak Raheja

4. Tamil Nadu Electricity Board,
rep. By its Commissioner (Zone 7),
Ambattur, Chennai 600 053

5. The Corporation of Chennai,
Rep. By its Commissioner,
Ripon Buildings,
Park Town, Chennai 600 003

... Respondents

C.R.P filed under section 227 of C.P.C., to set-aside the fair and decretal order dated 23.08.2016 passed in I.A.No.64 of 2016 in O.S.No.117 of 2013 on the file of the learned III Additional District & Sessions Judge, Thiruvallur at Poonamallee.

For Petitioner : Mr. J.R.K.Bhavanantham

For Respondent : Mr.L.Dhamodaran

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. Challenging the order dated 23.08.2016 passed in I.A.No.64 of 2016 in O.S.No.117 of 2013 on the file of the III Additional District Court, Thiruvallur at Poonamallee, the plaintiff has filed the above Civil Revision Petition.

3. The plaintiff filed a suit in O.S.No.117 of 2013 for recovery of possession, permanent injunction, for damages and for past and future damages.

4. The defendants filed their written statement and are contesting the suit. In the said suit, it is brought to the notice of this Court that this Court had appointed an Advocate Commissioner to find out the physical features and to identify the property with the assistance of a Taluk Surveyor. Pursuant to the orders of this Court, the Advocate Commissioner inspected the property and filed his report. The plaintiff

filed his objections to the Commissioner's report. Subsequently, the plaintiff filed an application in I.A.No.64 of 2016 to scrap the Advocate Commissioner's report and to appoint another Advocate Commissioner and to inspect the suit property. The application filed by the plaintiff was opposed by the defendants stating that there is no necessity for scrapping the report of the Commissioner. The trial Court dismissed the application filed by the plaintiff stating that the application has been filed at the premature stage and the plaintiff should have filed an application only at the time of marking the Advocate Commissioner's report and plan.

5. Since the trial Court had dismissed the application on this ground, it has not gone into the merits of the application and decided the case. In such circumstances, I am of the view that the application filed by the plaintiff to scrap the Advocate Commissioner's report is very much maintainable at this stage and hence the order passed by the trial Court in I.A.No.64 of 2016 is liable to be set aside.

6. Accordingly, the order dated 23.08.2016 passed in I.A.No.64 of 2016 in O.S.No.117 of 2013 is set aside and the matter is remitted back to the III Additional District Judge, Tiruvellore at Poonamallee for fresh

consideration. The III Additional District Judge, Tiruvellore at

M. DURAISWAMY,J.,

rg

Poonamallee is directed to decide the matter afresh on merits and in accordance with law and dispose of the same within a period of one month from the date of receipt of a copy of this order.

The Civil Revision Petition is allowed. No costs. Connected miscellaneous petition is closed.

13.03.2017

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To
The III Additional District & Sessions Judge, Thiruvallur at Poonamallee.

**C.R.P.(PD)No.774 of 2017
and C.M.P.No.3833 2017**

13.03.2017
<http://www.judis.nic.in>