

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.4626 of 2014
and
M.P.No.1 of 2014

1. Tamilmani
2. Krishnamurthy
Petitioners

...

vs.

Viswanathan

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 15.07.2014 passed by the learned Subordinate Judge, Ariyalur in I.A.No.94 of 2013 in A.S.No.37 of 2002.

For Petitioners : Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates

For Respondent : Mr.A.R.Suresh

ORDER

The defendants are the revision petitioners.

2. For the sake of convenience, the parties are referred to here under according to their litigative status and ranking in the suit.

3. The brief facts of the case is as follows:

(i) The plaintiff filed the suit for declaration of his right and title over the suit scheduled property and for the consequential relief of permanent injunction as against the defendants. Pending suit, the plaintiff filed an application in I.A.No.114 of 2001 seeking appointment of Advocate Commissioner to inspect the suit property and to note down the physical features. The Commissioner has filed his report and plan on 24.07.2001. Thereafter, the judgment was pronounced on 30.01.2002 in O.S.No.127 of 1997 dismissing the suit filed by the plaintiff.

(ii) Aggrieved by the same, the plaintiff filed an appeal in A.S.No.37 of 2002 before the Sub Court, Ariyalur. The Appellate Court, while allowing the appeal, remanded the matter back to the trial court. Aggrieved by the remand order, the defendants preferred CMA No.2075 of 2007 and this Court while setting aside the order passed by the trial Court had given a direction to dispose of the

appeal with the available materials by affording an opportunity to the parties, as expeditiously as possible. Only on the strength of the said direction, the plaintiff once again filed an application in I.A.No.94 of 2013 seeking appointment of an Advocate Commissioner, which was allowed by the Appellate Court.

(iii) Challenging the same, the defendants are before this Court in this revision.

4. Heard both sides.

5. Admittedly, pending trial, a Commissioner was appointed and that he also filed his report. The trial court after considering the documents available on record and also the report filed by him, had dismissed the suit filed by the plaintiff. It is also seen that when the order of remand was set aside by this Court, it had only directed the appellate court to decide the matter with the materials available on record. The plaintiff has also not pointed out before any of the forum that the report filed by the Commissioner, who was appointed at the trial stage, suffer from any irregularity or shortcomings. Even the appellate court has not given any direction for appointing a new Commissioner without whose report, the matter cannot be

adjudicated. It is only the plaintiff to improve his case has sought for appointment of a Commissioner at the appellate Stage in the same suit, that too, without even scrapping the earlier report filed by the Commissioner.

6. In view of the above said facts and circumstances, this Court is of the opinion that the order passed by the court below has to be set aside as it suffers from infirmity. Accordingly, the order dated 15.07.2014 passed by the learned Subordinate Judge, Ariyalur in I.A.No.94 of 2013 in A.S.No.37 of 2002 is set aside and this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

12.01.2017

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Index: Yes/No

Internet: yes

To

The Subordinate Judge, Ariyalur

PUSHPA SATHYANARAYANA.J

vj2

C.R.P.PD.No.4626 of 2014

12.01.2017

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