

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No. 453 of 2015 and
MP.No.1 of 2015

M.Kirubakaran

...Petitioner

Vs

N.Kesavan

...Respondent

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair and decreetal order dated 19.12.2014 made in I.A.No.382/2014 in I.A.No.173/2013 in O.S.No.31/2000 on the file of the District Munsif Court, Coonoor.

For Petitioner	: Ms.P.T.Asha for M/s.Sarvabhauman Associates
For Respondent	: Mr.S.Elambharathi

ORDER

The petitioner filed an application before the learned District Munsif, Coonoor, to scrap the report submitted by the Commissioner and to issue fresh warrant for inspection and submission of report. The application was dismissed by the learned District Munsif, by way of a very brief order. The order is under challenge in this civil revision petition.

2. The learned counsel for the petitioner contended that the trial Court issued a commission to inspect the suit property and submit a report

notwithstanding the fact that certain prayers have already been deleted by the respondent in his application in I.A.No.173 of 2013. According to the learned counsel, the Commissioner exceeded his brief by making certain observations and placing reference to the settlement register, in the absence of direction to submit a report with reference to the settlement records. The learned counsel further contended that the prayer in the application was only to conduct a fresh inspection within the parameters of the petition filed by the respondent in I.A.No.173 of 2013.

3. The learned counsel for the respondent supported the order passed by the learned trial Judge. According to the learned counsel, the trial Court taking into account the nature of objections raised by the petitioner and the stage of the suit, rightly dismissed the application.

4. The background facts indicate that the respondent filed an application in I.A.No.173 of 2013 for appointment of an Advocate Commissioner. Though the respondent earlier wanted the Advocate Commissioner to measure the property and even to decide the possession, those reliefs were not pressed. In short, the respondent wanted inspection of the property in T.S.Nos.48, 49 and 50 in Ward A, Block 26 of Coonoor town and fix its southern boundary. The application was allowed by the trial Judge. However, while issuing the warrant, even those portions which were already deleted by the respondent were also included, resulting in conducting

inspection by the Advocate Commissioner and submitting a report, containing materials which were not even sought for by the respondent.

5. The petitioner filed an application to scrap the report and to re-issue commission for filing a fresh report. The trial Judge ought to have considered the merits of the application in the light of the objection filed by the petitioner. The order passed by the trial Court does not contain any material whether application was made to decide the merits of the application filed by the petitioner. The trial Court proceeded as if it is possible for the petitioner to raise objection during the course of trial or arguments. When an application is filed by a party complaining that notwithstanding deletion of certain portions in the prayer, the application contained such deleted portions, the Court ought to have considered those contentions. Since the trial Court failed to consider the issue on merits, the order impugned in this civil revision petition is liable to set aside.

6. In the result, the order dated 19 December 2014 is set aside. The application in I.A.No.382 of 2014 is restored to file. The learned trial Judge is directed to consider the matter afresh and pass orders on merits and as per law. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

K.K.SASIDHARAN,J.

gms

7. The civil revision petition is allowed to the extent indicated above.
No costs. Consequently, connected miscellaneous petition is closed.

05.04.2017

gms

To

The District Munsif Court, Coonoor.

C.R.P.(P.D.) No. 453 of 2015

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