

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.574 and 890 of 2015
& M.P.No.1 of 2015

1.Perumayee
2.Thangamani
3.Saraswathi

.. Petitioners
in both the CRPs.

Vs.

1.S.Loganathan
2.S.Ganesan

.. Respondents
in both the CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 17.11.2014 made in I.A.Nos.120,121 of 2014 in I.A.No.121 of 2007 in O.S.No.34 of 2007 on the file of the District Munsif Court, Sankari.

In both CRPs.

For Petitioners : Ms.Zeenath Begum

For Respondents : Mr.R.Ezhilarasan

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 17.11.2014 made in I.A.Nos.120 and 121 of 2014 in I.A.No.121 of 2007 in O.S.No.34 of 2007 on the file of the District Munsif Court, Sankari.

2. In both the Civil Revision Petitions, the parties are one and the same and the issues are interlinked and hence, they are disposed of by this common order.

3. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.34 of 2007 on the file of the District Munsif Court, Sankari. The petitioners filed said suit for declaration that the power of attorney deed dated 25.11.2002 is null and void and for cancellation of the sale deed dated 26.05.2004 executed by the first respondent in favour of the second respondent and for injunction. Along with the suit, the petitioners filed I.A.No.121 of 2007 for appointment of an Advocate Commissioner to visit the suit property and note down the physical features. In the said application, Advocate Commissioner was appointed and he inspected the property and filed his report on 24.08.2007. The respondents filed written statement on 09.06.2007 and are contesting the suit. The trial commenced and the petitioners examined P.W.1 in chief. When the suit was posted for cross-examination of P.W.1, the respondents filed two applications in I.A.No.120 of 2014 to condone the delay of 2339 days in filing objection to the Advocate Commissioner's report

dated 24.08.2007 and I.A.No.121 of 2014 for reissue of warrant of commission in I.A.No.121 of 2007.

4. According to the respondents, in I.A.No.121 of 2007, the Commissioner was appointed exparte and he inspected the property on the next day itself i.e., on 14.02.2007 without giving notice to the respondents and filed report as per the instruction of the petitioners. The particulars given in the report of the Advocate Commissioner is not correct and therefore, it is necessary to file objection to the Advocate Commissioner's report for reissue of warrant of commission. Only when the respondents are preparing for cross-examination of P.W.1, they came to know about these facts and filed the two applications immediately. The respondents also made averments on the merits of the case.

5. The petitioners filed counter affidavit, denied all the averments made in the said applications, reiterated the averments made in the plaint and contended that the respondents have not given any valid reason for condoning the delay of 2339 days in filing objection to the report of the Advocate Commissioner and reissue of warrant of commission and prayed for dismissal of both the applications.

6. The learned Judge allowed both the applications on the ground that the respondents have right to file objection to the Commissioner's report and the Commissioner's report is not correct.

7. Against the said order dated 23.01.2015 made in I.A.Nos.120 and 121 of 2014 in I.A.No.121 of 2007, the present two Civil Revision Petitions are filed by the petitioners/plaintiffs.

8. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

9. From the materials available on record, it is seen that the Advocate Commissioner has filed a report on 24.08.2007 and the respondents did not file any objection to the said report. They have come out with the present two applications after seven years of filing of the report by the Advocate Commissioner and after commencement of trial. From the impugned order of the learned Judge, it is seen that the learned Judge allowed the applications on the ground that the respondents have right to file objection to the Commissioner's report and the report of the Advocate Commissioner is not correct. The learned Judge failed to see that the reason given by the respondents to condone the delay is not valid or sufficient

reason. Further, the report of the Advocate Commissioner is only to assist the Court in deciding the issue and the same cannot be taken as a final. The Court may accept or reject the report of the Advocate Commissioner.

10. In the present case, the learned Judge has already come to conclusion that the report of the Advocate Commissioner is not correct. In such circumstances, the learned Judge has to consider the evidence let in by the parties to prove their case and decide the issue by appreciating the evidence let in by the parties. Further, the learned Judge erred in reissuing warrant of commission, which amounts to permit the respondents to collect evidence.

11. In view of the above facts, both the Civil Revision petitions are allowed and the impugned order dated 23.01.2015 made in I.A.Nos.120 and 121 of 2014 in I.A.No.121 of 2007 in O.S.No.34 of 2007 is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

22.12.2017

Index : Yes/No
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V.M.VELUMANI, J.

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To

The District Munsif, Sankari.



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