

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.04.2017**

CORAM:

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

C.R.P.(N.P.D.) No. 1947 of 2013 and
M.P.No.1 of 2013

1. Elumalai Naicker
2. Muthammal

...Petitioners

Vs

Ganesan Naicker (Died)

1. Deivanayagai
2. Raman
3. Kamsala
4. Vasantha
5. Lakshmi Narayanar
6. Govindammal

...Respondents

(Respondents impleaded in E.A.No.45/06,
dated 19.07.2006)

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, against the impugned order dated 20.02.2012 passed in E.P.No.84 of 1998 in O.S.No.22 of 1991 by the District Munsif Court at Chengalpattu.

For Petitioners : Mr.Dr.C.Ravichandran

For Respondents : Mr.S.N.J.Hariharan for
M/s.V.Nicholas

ORDER

The learned District Munsif, Chengalpattu, without even filing an application by the decree holder remitted the report to the Advocate Commissioner appointed earlier, to execute the warrant in accordance with the decree in O.S.No.22 of 1991, without considering the earlier report filed by the very same Commissioner that the identity of the property is in dispute. The said order is under challenge at the instance of the respondents in E.P.No.84 of 1998.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

3. The respondents obtained a decree in O.S.No.22 of 1991 on 26 September, 1996. The respondents, with a view to execute the decree filed Execution Petition in E.P.No.84 of 1998 before the learned District Munsif, Chengalpattu. The Execution Petition was opposed by the petitioners by filing counter affidavit. Thereafter, the Executing Court appointed Advocate Commissioner to execute the decree.

4. The Commissioner appears to have filed a report indicating that the identity of the property is in dispute. The Trial Court took the

report on file. Thereafter, without filing any application by the parties *suo moto* directed the Commissioner to inspect the property once again and execute the warrant.

5. There is no dispute that neither the petitioners nor the respondents filed objection to the Commissioner's report filed earlier, pursuant to the warrant issued by the executing Court. There is no question of the Executing Court *suo moto* directing the Advocate Commissioner to inspect the property, without evaluation of the report already filed by the Commissioner. The learned Executing Judge exceeded his brief by calling for a fresh report from the Advocate Commissioner. I am therefore of the view that the issue requires fresh consideration.

6. The respondents are given liberty to file objection to the report submitted by the Advocate Commissioner earlier. The petitioners should also be given opportunity to submit their response taking into account the report submitted by the Advocate Commissioner. The learned District Munsif is directed to consider the response/objection submitted by the parties to the report submitted by the Advocate Commissioner and decide the matter afresh.

K.K.SASIDHARAN,J.

(svki)

7. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2017

Asi/svki

To

The District Munsif Court
Chengalpattu

C.R.P.(NPD) No. 1947 of 2013