

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2017

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(PD).No.2274 of 2012
and M.P.No.1 of 2012

1. B.Murthi
2. B.Sankar

.. Petitioners

Vs.

1. G.Sundaram (Deceased)
2. Prabhavathi
3. S.Rukmani
4. S.Kasthuri Murugan

.. Respondents

(Respondents 3 and 4 brought on record as legal heirs of deceased 1st respondent vide order of Court dated 16.08.2017 by VMVJ, made in CMP No.13446 of 2017 in CRP.(PD) No.2274 of 2012)

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Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.04.2012 made in I.A.No.2085 of 2009 in O.S.No.96 of 2002 on the file of the Additional District Munsif Court, Tindivanam.

For Petitioners : No appearance
R1 : died
For R2 to R4 : Mr.P.Kaviri Nadar for
Mr.N.Manokaran

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.04.2012 made in I.A.No.2085 of 2009 in O.S.No.96 of 2002 on the file of the Additional District Munsif Court, Tindivanam.

2. The petitioners are the defendants 2 & 3 and the respondents 1 & 2 are the plaintiffs in O.S.No.96 of 2002. The respondents 1 and 2 filed suit against the petitioners and one Hizamudeen for symbolic delivery of B schedule pathway and mandatory injunction to demolish the compound wall constructed in the B schedule property. First defendant and second petitioner filed written statement and are contesting the suit. The petitioners filed I.A.No.2085 of 2009 for appointment of one K.B.Appandairaj, Junior Engineer of Swastik Builders as Commissioner to inspect the suit property, to note down the physical features including the nature and location of the suit property, evaluate the market value of the

property and to file a report. The respondents 1 & 2 initially sought time for filing counter and subsequently, made an endorsement that they are not opposing the said application. By order dated 25.11.2009, K.B.Appandairaj, was appointed as Commissioner as prayed for.

3. After three years of such appointment on 03.04.2012, when the application was taken up for final hearing, the learned Judge took note of the fact that for three years, there is no progress made by the Commissioner/Engineer, the petitioners have filed the application only to drag on the proceedings and cause hardship to the respondents, who are senior citizens, dismissed the application.

4. Against the order of dismissal dated 03.04.2012 made in I.A.No.2085 of 2009, the present civil revision petition is filed by the petitioners/defendants 2 & 3.

5. During pendency of the civil revision petition, the first respondent died and his children are impleaded as respondents 3 & 4. Mr.P.Kaviri Nadar, the learned counsel representing Mr.N.Manokaran, is appearing for the respondents 2 to 4.

6. Heard both sides and perused the materials available on record.

7. The learned counsel for the petitioners submitted that the learned Judge after having appointed Commissioner, is barred from dismissing the application. The respondents did not oppose the said application for appointment of Engineer as Commissioner and the learned Judge erred in dismissing the application. These contentions are untenable. The learned Judge appointed K.B.Appandairaj as Commissioner, whom the petitioners wanted to be appointed as Commissioner to inspect the property, to file a report and execute the warrant of commission. The issue in the suit is with regard to pathway and for removal of compound wall constructed by the petitioners encroaching pathway. The suit is of the year 2002 and when the suit was ripped for trial, the petitioners filed application and the trial of the suit was stalled. The respondents are senior citizens and by the proceedings taken by the petitioners, they are put to hardship and the suit was not taken up for trial. The petitioners have not given any explanation for their inaction in executing the warrant of commission.

8. The learned Judge considering all the above facts dismissed the application by giving cogent and valid reasons. The learned Judge in view of the delay in tactics of the petitioners, also directed the petitioners to pay a sum of Rs.3,000/- as costs to the respondents. There is no irregularity or illegality in the order of the learned Judge dated 03.04.2012 warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. As the suit is of the year 2002, the Additional District Munsif Court, Tindivanam, is directed to dispose the suit in O.S.No.96 of 2002 as expeditiously as possible in any event not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

18.08.2017

Index : Yes/No

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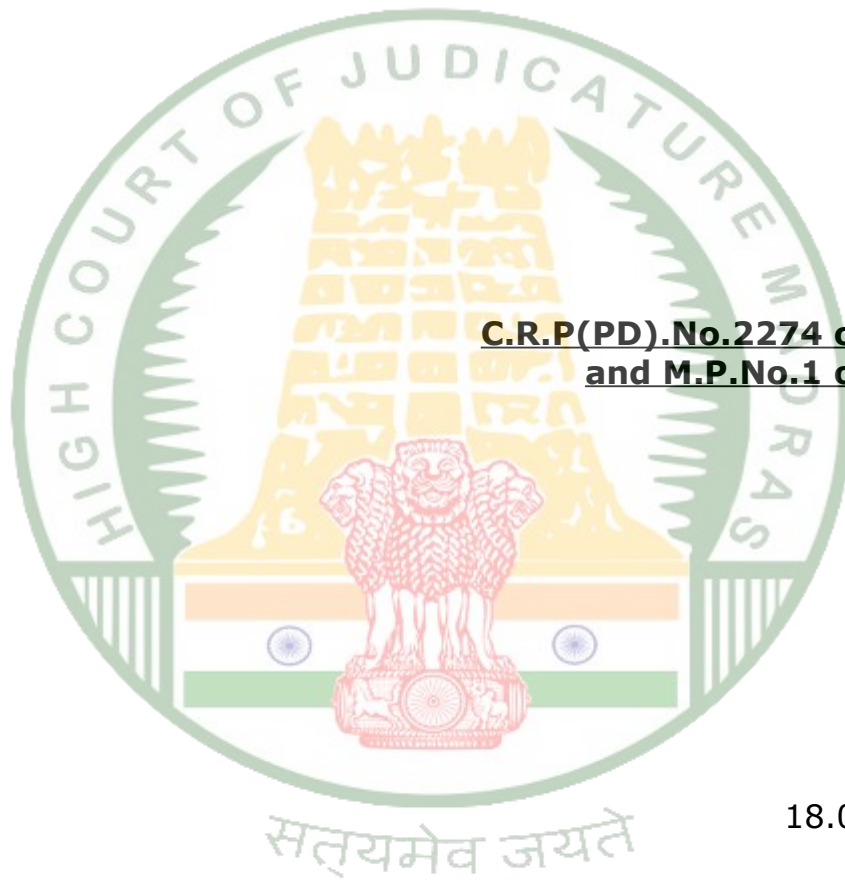
To

The Additional District Munsif, Tindivanam.

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V.M.VELUMANI, J.

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