

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.2434 of 2012
& M.P.No.1 of 2012

1. A.Kaliyaperumal
2. K.Purushothaman

.. Petitioners

Vs.

1. V.Dhakshnamurthy
2. V.Jayasankar

.. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India against the granting of exparte interim direction to appoint an Advocate Commissioner in I.A.No.457/2012 in O.S.No.111/2012 dated 15.06.2012 passed by the learned District Munsif, Panruti.

For Petitioners : M/s.P.A.Chithramani

For Respondents : Mr.S.K.Rakhunathan

ORDER

This Civil Revision Petition has been filed against the granting of exparte interim direction to appoint an Advocate Commissioner in

I.A.No.457/2012 in O.S.No.111/2012 dated 15.06.2012 passed by the District Munsif, Panruti.

2. The petitioners are defendants, respondents are plaintiffs in O.S.No.111 of 2012 on the file of the District Munsif Court, Panruti. The respondents filed suit for declaration and permanent injunction, restraining the petitioners from interfering with the suit property.

3. Before filing of the suit by the respondents, the second petitioner filed Caveat.O.P.No.135 of 2012, on the file of the same Court. The respondents along with the above suit, filed I.A.No.457 of 2012 for appointment of an Advocate Commissioner to measure the suit property and the property of the petitioners as per the sale deeds. On 16.05.2012, even though Caveat was filed by the second petitioner, without issuing notice to the petitioner, the learned Judge appointed Mr.N.Ananthraman, Advocate Commissioner to inspect the suit property and the property belonging to the petitioner and subsequently directed him to file a report on or before 10.07.2012, after measuring the same with the help of Surveyor.

3. Against the said order dated 15.06.2012 passed in I.A.No.457 of 2012 in O.S.No.111 of 2012, the present civil revision petition has been filed by the petitioners.

4. According to the learned counsel for the petitioners, without issuing notice to the petitioner, the Advocate Commissioner was appointed exparte. The Commissioner also without issuing notice to the petitioner in arbitrary manner, measured the property of the petitioner along with the suit property and filed his report. In the circumstances, the petitioners have prayed for setting aside the order of appointing the Advocate Commissioner.

5. The learned counsel appearing for the respondents submitted that the learned Judge considering the materials on record, has appointed Advocate Commissioner and the same is valid. The Advocate Commissioner has properly executed the warrant of commission and hence the respondents prayed for dismissal of the civil revision petition.

6. Heard the learned counsel for both parties and perused the materials on record.

7. From the typed set of papers, it is seen that the second petitioner has filed a copy of the Caveat.O.P.No.135 of 2012 filed by him on 16.05.2012. It is not in dispute that Caveat.O.P.No.135 of 2012 was on file when the learned Judge appointed Advocate Commissioner. It is clear from the materials on record, that in spite of the Caveat Petition filed by the petitioner on 16.05.2012, the learned Judge appointed Advocate Commissioner without issuing notice to the petitioner. It is not disputed by the learned counsel for the respondents that petitioner has filed Caveat. It is not the case of the counsel for the respondents that all the papers were served on the petitioner before suit was numbered or before first hearing of the suit.

8. In view of the order of the learned Judge appointing the Advocate Commissioner without notice to the petitioners, the impugned order is set aside. The report of the Advocate Commissioner filed if any is eschewed. The learned Judge is directed to hear the I.A.No.457 of 2012 in O.S.No.111 of 2012 on merits after giving opportunity to the petitioner to file counter and after hearing both the parties, pass orders in accordance with law.

9. In the above circumstances, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

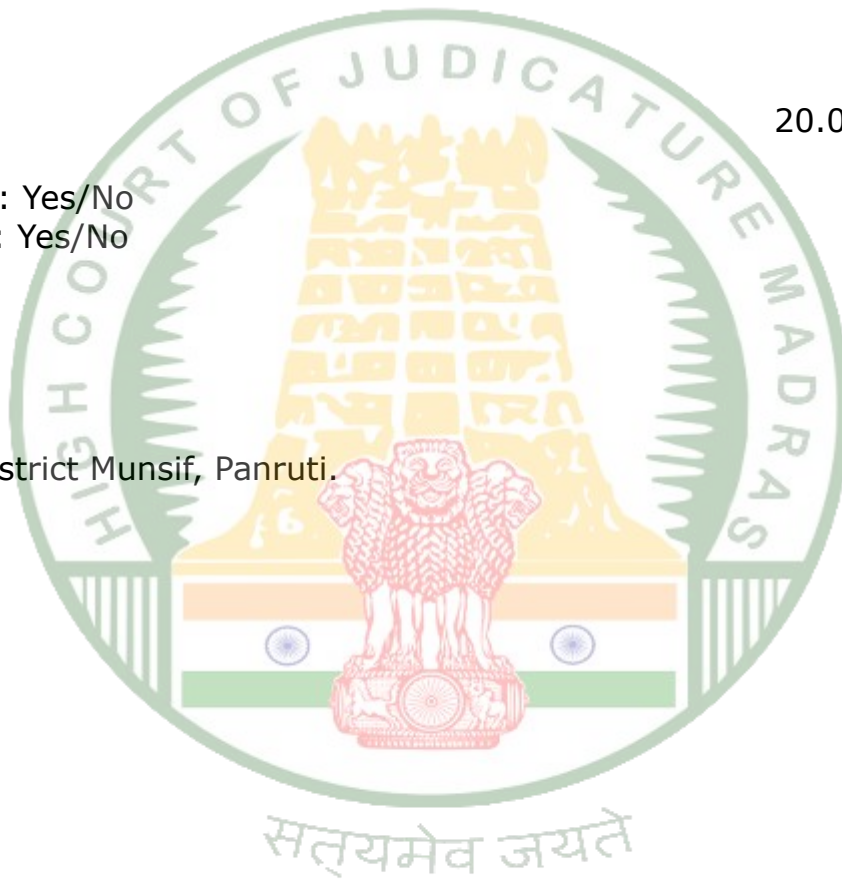
20.07.2017

Index : Yes/No
Internet: Yes/No

gsa

To

The District Munsif, Panruti.



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V.M.VELUMANI, J.

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