

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.3766 of 2016

and

C.M.P.No.19121 of 2016

Ranganathan

.. Petitioner

vs

Murugavel (Died)

1.Neelaveni

2.Tamilvani

3.Tamilkodi

4.Karikalan

5.Chandra

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair and decreetal order dated 11.04.2016 passed by the learned District Munsif, Jayamkondan in I.A.No.258 of 2015 in O.S.No.292 of 2005

For Petitioner : Mr.M.Senthil Vadivu

For Respondents : Served-No appearance

ORDER

Heard the learned counsel for the revision petitioner. Despite service, the respondents have not appeared either in person or through the counsel.

2. The plaintiff, who was not successful in getting the application filed under Order 26 Rule 9 of the Code of Civil Procedure to re-open the appointment of a Commissioner, is the revision petitioner.

3. The case of the revision petitioner is that, the suit has been filed for declaration and the consequential recovery of possession and also for mandatory injunction to remove the fencing and the pillars put up by the original defendant. Along with the suit, an application was filed for appointment of a Commissioner. Though the Commissioner was appointed, as he could not avail the services of the Surveyor, he has not filed his report. In the meanwhile, the original defendant died and steps were taken to implead his heirs and it took some time to complete the procedure. In the meantime, the earlier application filed seeking appointment of a Commissioner was closed for statistical purpose. Now the present application is filed for re-opening of the Commissioner petition. However, the Court below dismissed the same on the ground that the plaintiff has not taken any steps to get the Commissioner appointed and get his report at the earliest point of time. Hence the revision.

4. The learned counsel appearing for the petitioner strenuously

contended that the earlier application for appointment of Commissioner was closed only for statistical purpose because there was a delay in impleading the legal heirs of the deceased original defendant. After the LR petition was allowed the present application was filed to re-open the application to appoint the Commissioner as the trial Court itself has expressed that the report of the Commissioner would be useful in disposing of the suit. However, the Court below has rejected the same on the ground of delay by holding that it is only an exercise of procrastination by the plaintiff. Accordingly, he prayed for setting aside the said order.

5. Admittedly, the suit is ripe for trial and at that stage, the present application has been filed. From the records it is seen that the legal heirs of the deceased original defendant was ordered in the year 2012 itself, however, this application to re-open the earlier Commissioner application has been filed only in the year 2015 by the plaintiff. In the impugned order, the learned Trial Judge had specifically stated that unless the report of the Commissioner is available, it would be difficult for the Court to adjudicate the suit. It has also been stated that only for that reason the earlier application for appointment of Commissioner was allowed. Having expressed that the report of the Commissioner would be helpful in

adjudicating the dispute between the parties, the Court below should have allowed the application, without rejecting the same.

6. In view of the same, the order dated 11.04.2016 passed by the learned District Munsif, Jayamkondan in I.A.No.258 of 2015 in O.S.No.292 of 2005 is set aside. The revision petitioner/plaintiff is permitted to re-open the application to appoint the advocate Commissioner to measure the suit property with the help of the surveyor and to file a report.

7. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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vj2

Index: yes/No

Internet: yes

To

The District Munsif, Jayamkondan

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