

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4792 of 2013
and
M.P.No.1 of 2013**

1.K.Palanivel
2.V.Thangavelu
3.Karunaiammal
4.K.Sasikumar

.. Petitioners

Vs.

1.R.Krishnasami
2.R.Shanmugam
Respondents

..

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Petition and Order dated 25.11.2013 made in I.A.No.901 of 2013 in O.S.No.441 of 2013, on the file of the Principal District Munsif Court, Erode.

For Petitioners : Mr.K.Venkatasubban
for M/s.Sarvabhaman Associates

For Respondents : Mr.A.Sundaravadhanam

ORDER

The plaintiffs in the suit in O.S.No.441 of 2013, on the file of the Principal District Munsif, Erode, are the civil revision petitioners before this Court, by challenging the docketing orders dated 25.11.2013 passed in I.A.No.901 of 2013 in O.S.No.441 of 2013.

2.It is the case of the petitioners/plaintiffs is that they have filed an application in I.A.No.901 of 2013 under Order 26 Rule 9 of C.P.C. and Section 151 of C.P.C. for an order of appointment of an Advocate Commissioner with a direction to note down the existing physical features in and around the suit property and to take measurement if necessary and also direct him to file his report with plan. Considering their case, the learned District Munsif, Erode was pleased to passed the order on 11.11.2013 by appointing one Mr.S.Velmurugan, as an Advocate Commissioner and directing the Advocate Commissioner to serve notice to both sides, shall visit the suit property and note down the physical features and file his report on or before 25.11.2013.

3.Pursuant to the order passed by the learned Principal District

Munsif, Erode, the said Advocate Commissioner was visited and filed his report on 21.11.2013. When the learned Principal District Munsif, Erode has taken the Advocate Commissioner's report on 25.11.2013, the Court has noted that in respect of direction by the learned Judge, by issuing notice to both sides, without issuing notice to the respondent, the Advocate Commissioner visited the property and note down the physical features and filed his report. Therefore, the learned Judge after hearing the Advocate Commissioner and the report dated 21.11.2013, has suo motu scrapped the Advocate Commissioner's report dated 21.11.2013 and directed the Advocate Commissioner Mr.S.Velmurugan, to re-visit the property after serving notice to both sides and note down the physical features and directed to file his report on or before 11.12.2013. Challenging the order dated 25.11.2013, the petitioners/plaintiffs have filed the present civil revision petition before this Court.

4.It is the case of the petitioners stated that without hearing both sides, the learned Judge have no power to scrap the Advocate Commissioner's report, the petitioners/plaintiffs also stated that without issuing notice to the respondent, the Advocate Commissioner has filed the report by visiting the property, but no other objection is made. It is made clear that as per the order dated 11.11.2013, the

learned Principal District Munsif, Erode has passed the orders as follows:

"Heard the learned counsel for petitioners. The petitioners states that there is a threat of damages to suit cart track and the existing physical features have to be noted down. Hence, Mr.S.Velmurugan is appointed as Commissioner. The Commissioner after serving notice on both sides, shall visit the suit property and note down its physical feature. The remuneration for the commissioner is fixed at Rs.2500/- Report and rough sketch by 25.11.2013."

5. When the learned Principal District Munsif, Erode has specifically directed the Advocate Commissioner to file his report by issuing notice to both sides and file his report before the Court. But, without following the order passed by the learned Principal District Munsif, Erode, dated 11.11.2013, the learned Advocate Commissioner without issuing notice to the respondent, visited the suit property and filed his report.

6. It is not the case of the petitioners/plaintiffs that the notice has been issued to the respondent, but he agrees that without issuing notice to the respondent/defendant, the Advocate Commissioner has visited the property. Unless the earlier report filed by the Advocate

Commissioner is scrapped, no fresh visit or re-visit the property or appointing other Advocate Commissioner would not be ordered.

7.I heard Mr.K.Venkatasubban, learned counsel for M/s.Sarvabhaman Associates, appearing for the petitioner and Mr.A.Sundaravadhanam, learned counsel appearing for the respondents 1 and 2 and perused all the records.

8.It is made clear that the Advocate Commissioner himself has admitted that without issuing notice to the respondent/defendant, he visited the property and filed his report. Therefore, the learned Principal District Munsif, Erode is having every power to suo motu taken up the report and to pass appropriate orders, since the Court himself has come to know that the Advocate Commissioner without issuing notice to the respondent/defendant, he visited the property. Therefore, on first instance, if the Court found that the report himself has filed without following the Order 26 Rule 9 of CPC and the orders passed by the concerned Court, the Court concerned is having power to scrap the report suo motu and to pass appropriate orders. In this case, when the Court has examined the Advocate Commissioner, he himself admitted that without issuing notice to the respondent/defendant, he has visited the property and filed his report, which act

is totally against the Order 26 Rule 9 of CPC and also the orders passed by the learned Principal District Munsif, Erode, dated 11.11.2013, since the learned Principal District Munsif, Erode, by order dated 11.11.2013, specifically directed the Advocate Commissioner to issue notice to both sides and thereafter only to visit the property and note down the physical features and file his report.

9. Therefore, unless the Court has scrapped the earlier report, the Court have no jurisdiction to issue the order to re-visit the property by the same Advocate Commissioner or appointing another Advocate Commissioner. Therefore, in this case, the act of the learned Principal District Munsif, Erode, is absolutely correct and there is no warranting interference by this Court in the order in I.A.No.901 of 2013 in O.S.No.441 of 2013 dated 25.11.2013, on the file of the Principal District Munsif Court, Erode, and hence the Civil Revision Petition is liable to be dismissed by confirming the order passed by the learned Principal District Munsif, Erode.

10. In the result:

(a) this civil revision petition is dismissed by confirming the order passed in I.A.No.901 of 2013 in O.S.No.441 of 2013, dated 25.11.2013, on the file of the

Principal District Munsif Court, Erode;

(b) the learned Principal District Munsif, Erode, is hereby directed to pass suitable orders directing the Advocate Commissioner to re-visit the suit schedule of property by giving notice to both parties and file his appropriate reports within a period of 15 days from the date of receipt of a copy of this order;

(c) on filing the Advocate Commissioner report, the learned Principal District Munsif, Erode, is hereby directed to dispose of the suit within a period of three months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2017

Index:Yes
Speaking Order

vs

To

The Principal District Munsif,
Erode.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(PD)No.4792 of 2013
and
M.P.No.1 of 2013

06.06.2017

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