

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.06.2017**

CORAM:

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

C.R.P.(P.D.) No.4287 of 2012

R.Duraiswamy : Petitioner

versus

K.R.Samiappan : Respondent

PRAYER: Revision filed against the order and decretal order in I.A.No.755 of 2012 dated 3.9.2012 in I.A.No.849 of 2006 in O.S.No.531 of 2002 on the file of the Principal District Munsif, Erode.

For petitioner :: Mr.v.Lakshminarayanan

For respondents :: Ms.Zeenath Begum

ORDER

The petitioner, in a suit for mandatory injunction, filed an application for appointment of Advocate Commissioner to inspect the property. The Trial Court appointed a Commissioner with direction to inspect the property and submit a report. Since the report was not filed by the Advocate Commissioner even after inspection, the Trial Court closed the application. The petitioner therefore filed an application in I.A.No.755 of 2012 to reopen the application, which was closed on 13 June 2012. The application was dismissed by the Trial Court primarily on the ground that sufficient time was

given before closing the application and as such, the petitioner has not made out a case for reopening the Commission application. The said order is under challenge in this civil revision petition.

2. I have heard the learned counsel for the petitioner. I have also heard the learned counsel for the respondent.

3. There is no dispute that the Trial Court pursuant to the application in I.A.No.849 of 2006, appointed Advocate Commissioner to inspect the property. It is also not in dispute that the Advocate Commissioner inspected the property along with a surveyor. However, report was not filed in spite of granting sufficient time by the Court. It was only under such circumstances, the Court closed the application. However, when an application was filed to reopen the application, the learned Trial Judge observed that the petitioner was at fault and as such, there is no question of reopening the commission application.

4. The petitioner being the applicant in the interlocutory application for issuance of commission, promptly paid the commissioner's batta. The commissioner inspected the property along with a surveyor. It is the duty of the commissioner to file his report before the Court, as expeditiously as possible. The failure on the part of the Commissioner to submit his report cannot be taken as a ground to close the application filed by the petitioner.

This aspect was not considered by the learned Trial Judge. I am therefore of the view that the impugned order is liable to be set aside.

5. In the result, the order dated 3 September 2012 is set aside. The learned Principal District Munsif, Erode, is directed to appoint another Advocate Commissioner with instruction to submit a report within a prescribed period. In case there is undue delay on the part of the Advocate Commissioner, it is open to the learned Trial Judge to appoint another Advocate Commissioner after recalling the warrant.

6. The civil revision petition is allowed as indicated above. No costs. Consequently, M.P.No.1 of 2012 is closed.

21.06.2017

Index:Yes/no
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To
The Principal District Munsif, Erode

K.K.SASIDHARAN, J.

(tar)

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