



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2110 of 2016 (PD)

&

C.M.P. (MD) No.9900 of 2016

The President,
Bikshandarkovil Panchayat,
Having Office at
Bikshandar Kovil,
Bikshandar Kovil Village,
Manachanallur Taluk,
Trichy.

.. Petitioner

Vs.

1.S.Nagarajan

2.The Residents of Maruthi Nagar,
Rep. by Rajarathinam,
Plot No.23, Maruthi Nagar,
Bikshandar Koil, Mannachanallur,
Trichy District and
Sakthivel
Plot No.24, Maruthi Nagar,
Bikshandar Koil, Manachanallur,
Trichy District.

3.Visveshwaran

4.Krishnamoorthy

5.Radhakrishnan

6.Nagarajan @ Ravi

7.Nataraj (Died)

Exonerated [As per order in
in I.A.No.706/2008, dated 08.12.2008]

8.The District Collector,
Trichirapalli District,
Trichy.

9.Deputy Director,
Trichy Local Planning Authority,
Trichy.



10. The Commissioner,
Manachanallur Panchayat Union,
Manachanallur,
Trichy.

.. Respondents

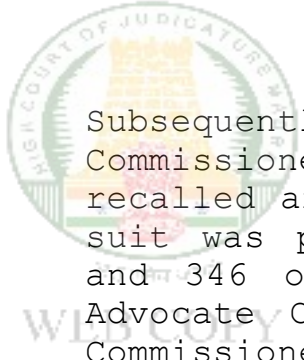
Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair order and decreetal order, dated 31.08.2016, passed in I.A.No.346 of 2016 in I.A.No.449 of 2005 in O.S.No.92 of 2002, by the learned Principal District Munsif-cum-Judicial Magistrate, Lalgudi.

For Petitioner : Mr.M.P.Senthil
For R1 : Mr.S.Parthasarathy
For R2 to R5 : Mr.M.R.Srinivasan
for Mr.R.Nandakumar
For R6, R8 & R9 : No Appearance
For R10 : Ms.M.Jansirani

ORDER

This Civil Revision Petition has been filed to set aside the fair order and decreetal order, dated 31.08.2016, passed in I.A.No.346 of 2016 in I.A.No.449 of 2005 in O.S.No.92 of 2002, by the learned Principal District Munsif-cum-Judicial Magistrate, Lalgudi.

2. The petitioner is the 10th defendant in the suit in O.S.No.92 of 2002, on the file of the Principal District Munsif-cum-Judicial Magistrate, Lalgudi. The first respondent is the plaintiff. Originally, the first respondent filed the suit against the respondents 2 to 6 and one Natarajan. After filing of the suit, the said Natarajan died and therefore, he was exonerated. Pending suit, an Advocate Commissioner was appointed in I.A.No.449 of 2005 and the Commissioner also filed his report and plan. The suit was decreed on 31.07.2009 and the respondents 2 to 5 filed A.S.No.175 of 2009 before the Principal Subordinate Court, Trichy. The said appeal was dismissed on 16.03.2011. Hence, the respondents 2 to 5 filed S.A.(MD)No.937 of 2011 before this Court and this Court by judgment and decree, dated 05.07.2013, remanded the suit to the Trial Court with a direction to the first respondent to examine both the Advocate Commissioner as well as the Surveyor, who are authors of Exs.C.1 to C.3 and has also given liberty to the respondents 2 to 6 to adduce additional evidence if any. Against the said judgment and decree, dated 05.07.2013 made in S.A.(MD) No.937 of 2011, the first respondent filed S.L.P.(Civil)No.32844 of 2013 before the Hon'ble Apex Court. The Hon'ble Apex Court on 03.07.2014, while disposing of the S.L.P. directed the first respondent to implead the concerned local authorities and the respondents 8 to 10 as defendants in the suit. Hence, the first respondent impleaded the petitioner and the respondents 8 to 10 as defendants in the suit. They filed written statement in the suit.



Subsequently, the Surveyor was examined as P.W.2. The Advocate Commissioner died and therefore, he was not examined. P.W.1 was recalled and cross-examined by the respondents 8 to 10. When the suit was posted for arguments, the petitioner filed I.A.Nos.345 and 346 of 2016 seeking permission to file objections to the Advocate Commissioner's report and to appoint a fresh Advocate Commissioner to inspect the suit property and file his report, respectively. According to the petitioner, there is a contradiction between the report of the Advocate Commissioner and the Surveyor. The Advocate Commissioner has not noted down the physical features of the suit property correctly. The first respondent opposed the same on the ground that the suit was filed in the year 2002 and the alleged superstructure and other physical features are subsequent to the filing of the suit and subsequent to the inspection by the Advocate Commissioner.

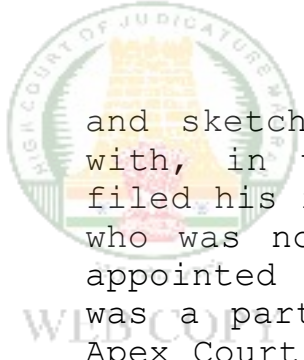
3.The learned Principal District Munsif-cum-Judicial Magistrate, Lalgudi, after considering the materials on record, allowed I.A.No.345 of 2016 filed by the petitioner seeking permission to file objection to the report of the Advocate Commissioner and his objection was taken on file. The learned Principal District Munsif-cum-Judicial Magistrate dismissed I.A.No.346 of 2016 filed seeking permission to appoint fresh Advocate Commissioner to inspect the suit property.

4.Against the said order, dated 31.08.2016, passed in I.A.No.346 of 2016 in I.A.No.449 of 2005 in O.S.No.92 of 2002, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the parties made their respective submissions, elaborately.

6.I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

7.From the materials available on record, it is seen that the petitioner was impleaded as 10th defendant as per the order of the Hon'ble Apex Court, dated 03.07.2014, made in S.L.P.(Civil) No.32844 of 2013 . This Court, in S.A.(MD)No.937 of 2011, remanded the suit to the Trial Court for fresh disposal. The petitioner, after his impleadment, filed written statement and is contesting the suit. As per the direction of this Court, the Surveyor was examined. Since the Advocate Commissioner died, he could not be examined as a witness. The application filed by the petitioner seeking permission to file objections to the report of the Advocate Commissioner was allowed and the objection of the petitioner to the report of the Advocate Commissioner, was taken on file. ~~Already~~ there was a direction by this Court while remanding the suit for fresh trial, to examine the Advocate Commissioner, who inspected the suit property and filed the report



and sketch. However, the said direction could not be complied with, in view of the fact that the Advocate Commissioner, who filed his report and sketch, is no more. Further, the petitioner, who was not a party, when the earlier Advocate Commissioner was appointed in I.A.No.449 of 2005, who filed Exs.C.1 to C.3 and he was a party impleaded only as per the direction of the Hon'ble Apex Court. In view of the above situation, the learned Principal District Munsif-cum-Judicial Magistrate ought to have allowed I.A.No.346 of 2016 also, by appointing a fresh Advocate Commissioner to inspect the suit property and file a report and also to examine him. Therefore, this Court is of the view that a fresh Advocate Commissioner need to be appointed to file a report. Hence, the fair order and decreetal order, dated 31.08.2016, passed in I.A.No.346 of 2016 in I.A.No.449 of 2005 in O.S.No.92 of 2002, by the learned Principal District Munsif-cum-Judicial Magistrate, Lalgudi, is set aside.

8.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

smn2

To

1.The Principal District Munsif-cum-Judicial Magistrate,
Lalgudi.

2.The District Collector, Trichirapalli District,
Trichy.

3.The Deputy Director, Trichy Local Planning Authority,
Trichy.

4.The Commissioner, Manachanallur Panchayat Union,
Manachanallur, Trichy.

+1CC to Mr.M.P.Senthil Advocate SrNo.12233

+1CC to Mr.R.Nandakumar, Advocate Sr.No.12149

+1CC to Mr.S.Parthasarathy, Advocate Sr.No.11990

GJM/PM/PN/20.3.17-4p-8C

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