

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.897 and 939 of 2017

COMMON ORDER:

1) C.R.P.No.897 of 2017 is filed, against the order dated 03.12.2016, passed in I.A.No.517 of 2016 in O.S.No.44 of 2005 on the file of the Principal Junior Civil Judge, Piler, wherein an application filed under Section 151 of C.P.C. to re-open the suit was dismissed.

2) C.R.P.No.939 of 2017 is filed, against the order dated 03.12.2016 passed in I.A.No.516 of 2016 in O.S.No.44 of 2005 on the file of the Principal Junior Civil Judge, Piler, wherein an application filed under Order XXVI Rule 9 of C.P.C. to appoint fresh advocate-commissioner was dismissed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

4) The facts in issue are as under:

The petitioners herein filed the above suit to declare their rights and title over the schedule property and to grant permanent injunction, restraining the respondents herein,

their men, agents, followers and family members from in any way interfering with the peaceful possession and enjoyment of the petitioners over the plaint schedule properties. When the suit was posted for arguments, the petitioners/plaintiffs filed these petitions to re-open the suit and also to appoint fresh advocate-commissioner. Respondents/defendants filed counter denying the averments in the affidavit.

5) After considering the rival submissions made, the trial Court dismissed both the petitions. Challenging the same, the present Civil Revision Petitions are filed.

6) As seen from the record, the entire trial is over and case is posted for arguments. The proceedings which are placed before the Court show that earlier an advocate-commissioner was appointed in I.A.No.271 of 2005 and he also filed his report, to which the respondents filed their objections. As the petitioners reported no objection, the said petition was closed. Again I.A.No.888 of 2010 came to be filed seeking appointment of advocate-commissioner, however the Court re-entrusted the warrant to the same Commissioner, who was appointed in I.A.No.271 of 2005. But the advocate-commissioner did not turn up after receipt of the warrant. Thereafter Sri Jayasekhar was entrusted with the warrant but at the request of both the parties, the

warrant was re-entrusted to the first advocate-commissioner, who was directed to execute the warrant. In spite of entrusting the warrant, the advocate-commissioner failed to file any report and did not take steps. Hence the matter was posted for taking steps. As the learned counsel for the petitioners failed to take steps and as the learned counsel for the petitioners therein prayed to close the said I.A., the same was closed on 10.09.2014. After closure of the evidence of both sides, the suit was posted for arguments. At that stage, the present petitions came to be filed.

7) From the above, it is clear that the first advocate-commissioner was appointed in the year 2005 and objections were filed. The said petition was closed on 13.10.2011 and later the warrant was re-entrusted, but the commissioner failed to file his report. The matter was posted for taking steps. Since the petitioners failed to take steps and counsel for the respondents therein reported no objection, I.A.No.880 of 2010 was closed on 10.9.2014. In the process entire trial was over and the case is posted for arguments.

8) Having regard to the above and taking into consideration the fact that the petitioners have also not taken any steps subsequent to the year 2014, I see no merits in the revisions and the same are liable to be dismissed.

9) Accordingly, both the Civil Revision Petitions are dismissed. There shall be no order as to costs.

10) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

07.04.2017

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