

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.173 of 2018
and CMP.No.983 of 2018

Pattayeeammal

.. Petitioner

Vs

1. Perumal

2. Jayalakshmi

.. Respondents

PRAYER

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order passed in IA.No.226 of 2017 in OS.No.253 of 2010 dated 22.11.2017 on the file of the I Additional District Munsif cum (FAC) II Additional District Munsif Court, Bhavani.

For Petitioner : Mr.M.A.P.Thangavel

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ORDER

According to the revision petitioner, the revision petitioner has filed a suit in OS.No.253 of 2010 before the II Additional District Munsif Court, Bhavani for declaration of title of the suit property and

for permanent injunction. In the aforesaid suit, the revision petitioner has also filed an application in IA.No.226 of 2007 seeking for appointment of Advocate Commissioner to note down the existing physical features in and around the suit property and to take measurements of Natham R.S.No.1083/9 and 1083/10, which is the suit property, with the aid of Taluk Surveyor. The aforesaid application was dismissed by the court below. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that no doubt there is delay in filing the application to appoint an Advocate Commissioner in the aforesaid suit, since there is a dispute regarding identity of the property and to determine the real issue of encroachment in the suit property by the respondents has to be decided by appointing an Advocate Commissioner with the help of Taluk Surveyor. The court below without considering the aforesaid contention of the petitioner, erroneously dismissed the application. According to the petitioner, in the year 2011, an application has been filed to implead Government Officials as party in the said suit. Hence, the present application has been filed in the year 2017, therefore, the

application is not barred by laches.

3. Considering the aforesaid facts and submissions of the learned counsel for the revision petitioner, the aforesaid facts would show that the revision petitioner has filed the suit in OS.No.253 of 2010 for declaration and permanent injunction. In the aforesaid suit, the revision petitioner has also filed an application to implead Revenue Officials as party and the same was dismissed, Against the said order, a Civil Revision Petition in CRP.No.4371 of 2013 has been filed and the same is pending. While the Civil Revision Petition is pending, the revision petitioner has filed the present application for appointment of Advocate Commissioner to identify the suit property. The court below has dismissed the said application by observing that the revision petitioner has filed the said application only to protract the suit and also for collecting evidence by appointing an Advocate Commissioner. It is an admitted fact the revision petitioner has filed the present application in the year 2017, when the suit is posted for trial. Therefore, filing an application for appointment of Advocate Commissioner at belated stage cannot be accepted. When the respondents have disputed and filed the written statement along with counter claim at the earlier stage, the revision petitioner was aware that there is a dispute regarding identity of the property. Hence, the

revision petitioner ought to have filed an appropriate application at the earlier stage itself, not at stage of trial commenced in the suit. Therefore, the contention of the revision petitioner is liable to be rejected. The second contention of the petitioner, to determine the real issue in the present suit, if an Advocate Commissioner along with Taluk Surveyor submit the report, the evidence in the suit will be minimised. The aforesaid contention could not be accepted. The petitioner filed application at belated stage, that too at the trial stage. The contention of the petitioner would be determined by trial court adducing oral and documentary evidence to prove the encroachment portion in the suit property. The revision petitioner can also produce necessary revenue documents before the court below to establish portion of the encroachment by the defendants. Therefore, this court is not inclined to interfere with the order passed by the court below. At this stage, the learned counsel for the revision petitioner seeks liberty to the revision petitioner to examine the Revenue Officials as witness in the said suit.

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4. In view of the request made by the learned counsel for the revision petitioner, it is for the trial court to consider the request of the revision petitioner at the time of filing an appropriate application.

The court below shall decide the suit independently, without being influenced by any of the observations made in the impugned order.

5. In the result, the Civil Revision Petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

22.01.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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D. KRISHNAKUMAR J.,

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To

The I Additional District Munsif cum
(FAC) II Additional District Munsif Court,
Bhavani.



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