

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.04.2018

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

CRP.(PD) No.1042 of 2011
and M.P.No.1 of 2011

V.Balu

... Petitioner

Vs

1.The Special Officer
349, Alangudi Primary Agricultural
Co-operative Bank Ltd.,
Alangudi Village
Valangaiman Taluk
Thiruvavarur District.

2.Kumudhavalli

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records in I.A.No.51 of 2010 in O.S.No.99 of 2008 dated 25.08.2010 passed by the Principal District Munsiff Court, Valangaiman and set aside the same as illegal.

For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mrs.R.Revathy [R1]
R2 – No Appearance

ORDER

The second defendant in O.S.No.99 of 2008 on the file of the Principal District Munsiff, Valangaiman at Kumbakonam had preferred this revision, challenging the dismissal order passed in I.A.No.51 of 2010, filed by the defendants for appointing a Commission under Order XXVI, Rule 10 for



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2. The brief facts that are necessary for the disposal of this case are :

- The first respondent/plaintiff has filed a suit for bare injunction in O.S.No.99 of 2008 seeking to restrain the defendants, the revision petitioner and the second respondent herein, from interfering with the possession. Along with the suit, they have taken out an application for appointment of Commission and an ex parte order was passed appointing a Commissioner. The Commissioner has issued notice on the parties, visited the suit property and has filed his report.
- On the basis of the report of the Commissioner, the plaintiff had moved an application for amendment of prayer and introduced a prayer for mandatory injunction for directing the defendants to hand-over the portion of the property to the plaintiff. Contending that the plaintiff have since fenced that portion of the property in relation to which the decree for mandatory injunction pertains, the revision petitioner and the second respondent have moved an application in I.A.No.51 of 2010 to set aside the Commissioner's report.
- This was resisted by the plaintiff and the same was accepted by the trial Court. Challenging the same, the revision petitioner has come before this Court.

3. The revision petitioner would submit that appointing a second Commission was required consequent to the amendment the plaint, which imply to that extent the character of the suit has also changed. Initially the plaintiff contended that it was in possession of the suit property, whereas now it is conceded that it is not in possession, at least in the portion to which its prayer for mandatory injunction pertains. It is in this context, seeking a fresh commission has become mandatory.

4. The learned counsel for the first respondent/plaintiff would contend that without setting aside the earlier Commissioner's Report in the manner known to law by cross-examining the Commissioner, it may not be appropriate for the trial Court to appoint a fresh Commission. To this extent, the order of the trial Court is intact.

5. Since this case is pending disposal for the last ten years and the only thing that appears to halt the proceeding is the appointment of a fresh Commission. To start with, there is considerable merit in the submission of the learned counsel for the first respondent, that till the report of the Commissioner already made available is set aside in the manner known to law, a fresh Commission is not generally appointed. This is the settled law and this Court is in no mood to change that principle. However, what distinguishes the present case at hand is that the defendants, who earlier defended the action for prohibitory injunction is now defending the action for prohibitory injunction. This scenario has arisen only after the filing of

<http://www.judis.nic.in> the Commissioner's Report. Necessarily, there may be some facts

available on lie, which may be useful for the defendants to put forward their case. This shall not be denied to them.

6. This Civil Revision Petition is accordingly disposed of with a direction that the revision petitioners may file a list of points which he wants the Commissioner to notice within a period of two weeks from the date of receipt of a copy of this order into the Court below, whereupon the said Court may direct the same Commissioner to visit the property and to file a report within a period of four weeks thereafter and then to proceed with the trial of the case on day to day basis. The trial Court is directed to dispose of the suit within a period of three months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

16.04.2018

ds

Note : Issue order copy on 23.04.2018

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Index : Yes/No
Speaking Order / Non-speaking Order

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N.SESHASAYEE, J.,

ds

To:
The Principal District Munsiff
Valangaiman.



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