

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.1550 of 2016 and C.M.P.No.8410 of 2016

N.Ramasamy

... Petitioner

Vs.

M.K.Rangasamy (Died)

M.R.Mohan

... Respondent

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 01.04.2016 made in I.A.No.437 of 2015 in O.S.No.663 of 2015 on the file of the II Additional District Munsif, Coimbatore

For Petitioner : Mr.P.Valliappan
For Respondent : Mr.R.Nandakumar

ORDER

The respondent herein has filed a suit in O.S.No.663 of 2015 against the petitioner for declaration and consequential injunction before the II Additional District Munsif, Coimbatore. The respondent herein has filed an application in I.A.No.740 of 2005 for appointment of Advocate Commissioner.

Advocate Commissioner was appointed and report also has been filed before the court below. The petitioner has filed an application under Order 16 Rule 1(2) of C.P.C. to summon the Village Administrative Officer, Bilichi Village, Coimbatore and the Registrar of FMB relating to the suit property through the Tahsildar, Coimbatore North Taluk. The said application was dismissed by the court below. Aggrieved by the said order, the petitioner has filed C.R.P.No.1932 of 2012 before this Court. By an order, dated 5.12.2015, this Court passed the following order:

“4. Learned counsel for the petitioner submitted that in view of the order passed by this Court in C.R.P.(PD) No.4347 of 2010, the petitioner, in order to prove the omission and commission in the report of the Advocate Commissioner, has taken out the present application and therefore, such application ought not to have been rejected, as such rejection causes prejudice to the petitioner, as he is prevented from bringing to the knowledge of the court about the omission and commission in the report. A perusal of the order made in the above said Civil revision petition, would also show that the earlier Advocate Commissioner has left the profession and therefore, he could be cross examined. When such being the factual position, there is nothing wrong in filing the present application by the defendant so as to prove the omission and commission in the Advocate Commissioner's report. It is needless to say that the respondent/second

plaintiff will have his opportunity to cross examine the Village Administrative Officer and also question the FMB register, if anything is sought to be established against his interest.

5 Accordingly, I find that the impugned order of the trial court cannot be sustained and consequently, the Civil revision petition is allowed. Considering the fact that the suit is of the year 2005, the trial court is directed to take up the main suit in O.S.No.663 of 2005 and dispose of the same on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. No costs, The miscellaneous petition is closed.”

Thereafter, V.A.O. was examined as P.W.3 and the petitioner has filed an application in I.A.No.232 of 2015 to summon the Surveyor who assisted the Advocate Commissioner. The said application was allowed on 24.3.2015. According to the petitioner, he paid witness battha several times, nevertheless the summon was returned along with a medical certificate stating that the Surveyor is suffering from Kidney ailment. Thereafter, the court below directed the petitioner to take alternative steps and in furtherance, he filed the present application in I.A.No.437 of 2015 under Order 16 Rule 1(2) of C.P.C. to issue witness summons to the Taluk Deputy Inspector of Survey, Coimbatore North Taluk, Coimbatore. The aforesaid application was dismissed by the court below.

2 According to the petitioner, it is only due to the Taluk Sureyor who was not in a position to appear before the court, he filed the instant application. Hence, the order passed by the court below is liable to be rejected.

3 The learned counsel for the respondent vehemently objected the contention of the petitioner by stating that sufficient opportunity was granted to the petitioner to summon Taluk Surveyor. Pursuant to the order passed in I.A.No.232 of 2015, the petitioner has filed the instant application with an intention to drag on the proceedings. Therefore, the order passed by the court below is perfectly in accordance with law. Therefore, the Civil revision petition is liable to be dismissed.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5 A perusal of record shows that the petitioner has filed an application in I.A.No.232 of 2015 to summon Taluk Surveyor who assisted the Advocate Commissioner. The said application was allowed on 24.3.2015 and the petitioner paid witness batta on several occasions. Due to ailment, Taluk Surveyor was not in a position to appear before the court below and hence the

present application has been filed. According to the learned counsel for the respondent, the present application for appointment of Taluk Deputy Inspector of Survey, Coimbatore North cannot be maintainable since he has not assisted the Advocate Commissioner, Taluk Surveyor alone assisted the Advocate Commissioner and therefore, the court below rightly dismissed the application. The court below passed the order in I.A.No.232 of 2015 on 24.3.2015. After a lapse of two years, the instant application has been filed. However, this Court is inclined to give an opportunity to the petitioner to file an appropriate application before the court below by modifying the prayer, permitting the petitioner to summon Taluk Surveyor, Coimbatore.

6 In view of the above, this Court is inclined to pass the following order:

(i) The impugned order passed by the learned II Additional District Munsif, Coimbatore in I.A.No.437 of 2015 in O.S.No.663 of 2015 is set aside and remanded to the court below to pass order afresh after affording an opportunity to the parties concerned.

(ii) The petitioner is permitted to file an application to summon Taluk Surveyor, Coimbatore North as directed by the court in I.A.No.232 of 2015 in the aforesaid suit within two weeks from the date of receipt of copy of the order.

D.KRISHNAKUMAR,J.

vaan

(iii) Both the parties undertakes to cooperate with the court below for disposal of the suit in O.S.No.663 of 2005

(iv) Sine the suit is of the year 2005, the learned II Additional District Munsif, Coimbatore is directed to dispose of the suit on or before 30.6.2018.

The Civil revision petition is allowed with the above directions.
No costs. Connected miscellaneous petition is closed.

13.02.2018

Speaking/Non Speaking order
Index: Yes/No
vaan

To
The II Additional District Munsif, Coimbatore

**C.R.P.(PD) No.1550 of 2016
and C.M.P.No.8410 of 2016**

WEB COPY