



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.07.2018
CORAM

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
C.R.P. (MD) No.1312 of 2018
and
C.M.P. (MD) No.5578 of 2018

Xavier, S/o.A.Savarimuthu

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its District Collector,
Trichy District,
Collectorate,
Trichy - 1.

2.The Tahsildar,
Town Hall,
Trichy.

3.The Commissioner,
Tiruchirappalli City Corporation,
Bharathidasan Salai,
Cantonment,
Trichy - 1.

4.The Assistant Commissioner-cum-Zonal Officer,
Tiruchirappalli City Corporation,
Bharathidasan Salai,
Cantonment,
Trichy - 1.

5.I.M.Maria Parveen

6.I.Francis

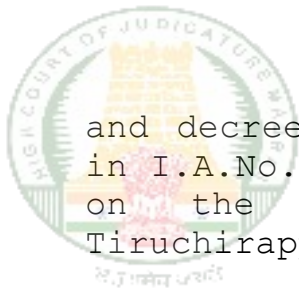
7.Ministry of Defence,
Government of India,
Rep. by its Station Commander,
117 Battalion,
Tamil Nadu, Trichy.

8.Union of India,
Rep. by its Union Secretary,
Secretariat,
Parliamentary Campus,
New Delhi.

... Respondents

<https://hcservices.ecourts.gov.in/hcservices/>

Prayer:- This Civil Revision Petition is filed under Article 227 of the Constitution of India, seeking to set aside the fair



and decreetal order dated 11.01.2018, made in I.A.No.930 of 2017 in I.A.No.179 of 2011 in I.A.No.899 of 2009 in O.S.No.1399 of 2009 on the file of the Principal District Munsif Court, Tiruchirappalli, by allowing the Civil Revision Petition.

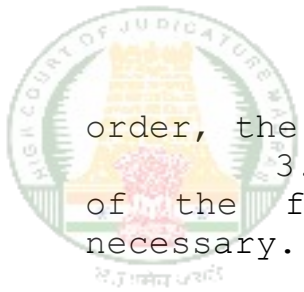
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For Petitioner : Mr.K.Baalasundharam

ORDER

The petitioner has filed the present Civil Revision Petition invoking Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order dated 11.01.2018, made in I.A.No.930 of 2017 in I.A.No.179 of 2011 in I.A.No.899 of 2009 in O.S.No.1399 of 2009 on the file of the Principal District Munsif Court, Tiruchirappalli.

2.The revision petitioner, who is the plaintiff, has filed the suit in O.S.No.1399 of 2009 before the Principal District Munsif Court, Tiruchirappalli, seeking demarcation of the suit property and for other reliefs. In the said suit, the revision petitioner has also filed an Interlocutory Application in I.A.No.899 of 2009 seeking to appoint an Advocate Commissioner to inspect the suit property with the help of qualified District Surveyor or Firka Surveyor. In the said I.A.No.899 of 2009, originally, the Court below has appointed one Mr.Sudarsanam, as Advocate Commissioner. Thereafter, due to his ill-health, he had not attended the Court. Therefore, the Court cancelled the earlier order and appointed one Mr.Ragavan as Advocate Commissioner in I.A.No.179 of 2011, which was subsequently filed by the revision petitioner herein. But, after the appointment of Mr.Ragavan as Advocate Commissioner, the petitioner had not taken any steps either to inform or getting the warrant through the Court to the said Advocate Commissioner Mr.Ragavan. The petitioner's counsel has filed a Memo in the Court below seeking either to direct the Commissioner Mr.Ragavan or to appoint any other Advocate Commissioner to inspect the suit property and file a report by fixing a particular date. The said Memo was taken up by the learned Principal District Munsif, Tiruchirappalli, and the same was rejected. Under such circumstances, the Court below has closed the said application for appointment of Advocate Commissioner on 13.06.2017, since it was pending from 2011 onwards. Thereafter, the petitioner has filed another application in I.A.No.930 of 2017 under Section 151 of C.P.C., seeking to re-open the commission petition, which was closed on 13.06.2017 and direct the Advocate Commissioner to re-visit the suit property with the help of Surveyor and file a report. The said Interlocutory Application was taken up by the learned Principal District Munsif, Tiruchirappalli, and the same was dismissed on 13.06.2017 on the ground that the petitioner had not taken any steps to serve notice or Court Warrant to the Advocate Commissioners Mr.Sudarsanam and Mr.Ragavan. Challenging the said



order, the present Civil Revision Petition has been filed.

3. Heard the learned counsel for the petitioner. In view of the following order, notice to the respondents is not necessary.

4. Admittedly, Mr. Sudharsanam, Advocate Commissioner was appointed in the year 2009, but due to his ill-health, he did not attend the Court. Pursuant to the application filed by the petitioner in I.A.No.179 of 2011, the Court has appointed Mr. Ragavan as Advocate Commissioner, but no warrant has been issued by the Court and there was no information given by the petitioner to the said Advocate Commissioner. Due to pendency of the said Advocate Commissioner's report for more than six years, the learned Principal District Munsif, Tiruchirappalli, has closed I.A.No.179 of 2011 on 13.06.2017. Thereafter, the petitioner has filed the present application in I.A.No.930 of 2017 for re-opening and re-issuing warrant to the same Advocate Commissioner viz., Mr. Ragavan, directing him to revisit the suit property with the help of Surveyor and file a report. The said application was dismissed by the learned Principal District Munsif, Tiruchirappalli, on 11.01.2018, holding that though the Court has appointed the Advocate Commissioner, without issuing warrant to the Advocate Commissioner for more than three years, the revision petitioner has come forward with the petition only with a view to drag on the proceedings.

5. From a bare reading of the orders passed by the Court below, this Court is of the view that neither the Court nor the revision petitioner has not taken any steps to serve warrant to the Advocate Commissioner and the suit is pending for more than 7 years only for want of Advocate Commissioner's report and on that sole reason, the Court below has not proceeded with the suit. If the Court wants to proceed with the case based on the Advocate Commissioner's report, the Court either ought to have directed the revision petitioner to take effective steps to serve warrant to the Advocate Commissioner or to proceed with the case independently without waiting for the Advocate Commissioner's report. However, in the present case, the Court below has not chosen to do the same. The suit is pending from 2009 onwards only for the receipt of report of the Advocate Commissioner. Therefore, the very rejection of the Memo filed by the petitioner, is totally unacceptable one and the learned Principal District Munsif, Tiruchirappalli, ought to have re-issued warrant to Mr. Ragavan, Advocate Commissioner, by calling him in person and hand over the warrant and directed him to inspect the suit property. But, without doing so, the Court below simply rejected the Memo stating that the petitioner has not taken any steps to serve warrant to the Advocate Commissioner. Therefore, this Court is of the view that it is the bounden duty of the Court to call for the Advocate Commissioner in person to the Court and



issue warrant as per law, since the Advocate Commissioner was appointed only by the Court.

6. In the result, this Civil Revision Petition is allowed and the fair and decreetal order dated 11.01.2018 made in I.A.No.930 of 2017 in I.A.No.179 of 2011 in I.A.No.899 of 2009 in O.S.No.1399 of 2009 on the file of the Principal District Munsif Court, Tiruchirappalli, is set aside. The learned Principal District Munsif, Tiruchirappalli, is directed to issue warrant to Mr.Ragavan, Advocate Commissioner, by calling him in person to the Court and hand over the warrant within a period of one week from the date of receipt of a copy of this order, directing him to inspect the suit property and file a report within a period of four weeks thereafter. On receipt of such report, the learned Principal District Munsif, Tiruchirappalli, is directed to dispose of the suit in O.S.No.1399 of 2009 on day-to-day basis, without giving any adjournment to both parties, within a period of two months thereafter and file a report before this Court within a period of ten days from the date of judgment. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Tiruchirappalli.

Copy to:

1.The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer,
Judicial Department,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Baalasundharam, Advocate, SR.No. 70842

C.R.P (MD) No.1312 of 2018
03.07.2018

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