



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.10.2018

DELIVERED ON : 20.11.2018

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) Nos. 2403 and 2404 of 2015

and

M.P. (MD) No. 1 of 2015

Thangarathinam

.. Petitioner in both C.R.Ps.

Vs.

1. Estherpathi

2. Thiraviam

3. Soundarrajan

C.R.Ps.

.. Respondents in both

(Respondents 1 and 2- given up vide Court order dated 27.09.2018 in C.R.P. (MD) Nos. 2403 and 2404 of 2015 by RTJ)

Common Prayer : These Civil revision petitions filed under Article 227 of the Constitution of India, to call for the records pertaining to the order dated 14.09.2015 made in I.A. Nos. 433 and 432 of 2015 in O.S. No. 95 of 2012 on the file of the learned Additional District Munsif, Tenkasi and to set aside the same.

For Petitioner

: Mr. T. Vadivelan

For Respondent no. 1

: Mr. A. Haja Mohideen

For Respondents 2 and 3

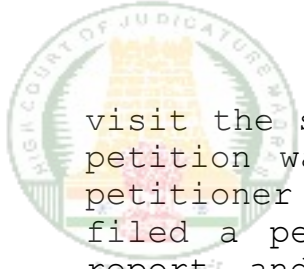
: Given up vide order dated
27.09.2018

COMMON ORDER

Heard Mr. T. Vadivelan, learned counsel appearing for the petitioner and Mr. A. Haja Mohideen, learned counsel appearing for the first respondent.

2. These petition have been filed against the order dated 14.09.2015 made in I.A. Nos. 433 and 432 of 2015 in O.S. No. 95 of 2012 on the file of the learned Additional District Munsif, Tenkasi.

3. The petitioner herein is the plaintiff and the first respondent herein is the first defendant in the suit. The petitioner has filed a suit in O.S. No. 95 of 2012 before the learned Additional District Munsif, Tenkasi for declaration and for recovery of possession. In this case, the petitioner has filed a petition in I.A. No. 433 of 2015 for appointment of an Advocate Commissioner to



visit the suit property and to note down the physical features. The petition was dismissed by the trial Court. Against the order, the petitioner has filed C.R.P.(MD)No.2403 of 2015. The petitioner has filed a petition in I.A.No.432 of 2015 to scrap the Commissioner report and plan and to direct the Commissioner to refund the Commissioner fees and to take action against the commissioner. The petition was dismissed by the lower Court. Against the order of dismissal, the petitioner has filed C.R.P.(MD)No.2404 of 2015.

4.On the side of the petitioner, it is stated that the respondents colluded together and the second respondent filed a mortgage suit against the first respondent and the third respondent purchased the property in the Court auction whereas the property belonged to the petitioner herein. The petitioner came to know about these things only when the third respondent came to the property with the help of the Court Ameen. The third respondent has claimed the second schedule property describing the same as part and parcel of 27 cents of land purchased by him in the Court auction. 9 $\frac{1}{4}$ cents is mentioned as third schedule property. The share of the second respondent is situated on the northern and western side of the property belonged to the petitioner. The second respondent has not sold away the property to his sons. Those properties are stated as fourth item of the suit properties. The second respondent and his sons each having $\frac{1}{4}$ share in the property and they are entitled for 6 $\frac{3}{4}$ cent each and prayed to appoint of an Advocate Commissioner to find out these facts.

5.On the side of the third respondent, it is stated that the Advocate Commissioner was appointed and he visited the suit property on 03.08.2013 and he has filed the report and plan. The petitioner has not filed any objection to the Commissioner's report and has not taken steps to re-issue the Commissioner warrant and has filed these petitions for appointment of second Commissioner and to refund the earlier Commissioner fees. The previous Commissioner has filed his report on 02.08.2014 but the petitioner has not taken steps till 20.01.2015. on 20.01.2015, the suit was dismissed for default. The petitioner has filed a petition in I.A.No.133 of 2015 and the petition is still pending. The petitioner filed a memo to scrap the Commissioner report on 10.09.2013. There are contradiction between the memo and the present petition.

6.On the side of the petitioner, it is stated that the suit was filed for declaration and for recovery of possession. The petitioner has purchased the property from the power agent of respondents 1 and 2. It is stated that the respondents 1 and 2 mortgaged the property to the third respondent. The third respondent has filed a suit and obtained sales Certificate from the Court. Only when the third respondent came with Court Ameen, the petitioner came to know about the case and subsequent auction purchase. The petitioner has filed a petition in I.A.No.1 of 2013 and the Advocate Commissioner was appointed and he had filed a Commissioner report and in that report, the Commissioner has not identified the third



item of the suit property. He has not identified the building in the property. The date of visit in the notice was altered by the Commissioner. The suit 9 ¼ cents was not mentioned. The petitioner has mentioned northern side of the property. The petitioner has mentioned that there was a fence in the northern side of the property but there is no fence mentioned in the report. The petitioner is ready to bear the charges for the appointment of the Advocate Commissioner. The identification and description of property is necessary for the recovery of possession and prayed that the earlier Commissioner report is to be scrapped and a new Commissioner is to be appointed.

7. On the side of the respondent, it is stated that the petitioner has already filed objections to the Commissioner's report and the lower Court has come to the correct conclusion that only to drag on the case, the petitioner has filed these petitions and prayed to dismiss these petitions.

8. A perusal of the records reveals that the petitioner has filed the suit for declaration and for recovery of possession. A Commissioner was appointed and the Commissioner has filed a report and plan on 25.07.2014. 10 days time was given for filing objections. The petitioner has filed his objections on 11.08.2014. Subsequently the petitioner has not appeared in the Court for trial and the suit was dismissed for default and again the suit was restored on the basis of a petition in I.A.No.133 of 2015. A perusal of objections filed by the petitioner reveals that some material facts are left out by the Commissioner and a perusal of the Commissioner report reveals that the Commissioner report is very short and it lacks the necessary particulars to decide the case.

9. In the above circumstances, the order passed by the trial Court is set aside. Civil Revision Petition (MD) No.2403 of 2015 is allowed. The trial Court is directed to scrap the earlier Commissioner report and to appoint new Commissioner to visit the suit property and to note down the physical features including the particulars mentioned in the objection statement filed by the petitioner. The petitioner is directed to deposit the necessary Commissioner fees.

10. The prayer in I.A.No.432 of 2015 is that as the Commissioner has not done the job properly, he has to refund the Commissioner fees, though the Commissioner fees is paid by the petitioner, the job of the Commissioner is that of a Court Officer and the Commissioner is not a servant of the petitioner. If the Commissioner has not done his work, the petitioner has to approach the lower Court for re-issuance of the Commissioner warrant. The petitioner has not taken any such steps. If the Commissioner is favouring the respondent, the petitioner can take steps against him before the proper forum.

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

11. In the above circumstances, there is no necessity to take



steps against the Commissioner and there is no necessity to call for refund of the Commissioner fees. Civil Revision Petition (MD) No. 2404 of 2015 is dismissed. No Costs. Consequently, M.P. (MD) No. 1 of 2015 is closed.

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Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Additional District Munsif, Tenkasi.

+1cc to Mr. T. Vadivelan, Advocate Sr. No. 96630

+1cc to Mr. A. Haja Mohideen, Advocate Sr. No. 962017

MRN

KM/BK/SAR3/20.12.2018/4P/4C

C.R.P. (PD) (MD) Nos. 2403 and 2404 of 2015
20.11.2018