



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.07.2018

CORAM :
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1520 of 2018
and CMP (MD) No.6591 of 2018

1. Chinnapillai Ammal
2. Kalyani Ammal

... Revision Petitioners/Petitioners/Plaintiffs

-vs-

S.M.Krishnan ... Respondent/Respondent/Defendant

PRAYER: Petition filed under Article 227 of the Constitution of India, against the decretal and fair order made in I.A.No.1165 of 2017 in I.A.No.299 of 2005 in O.S.No.616 of 2005 on the file of the III Additional District Munsif, Trichy dated 13.02.2018.

For Petitioner : Mr.R.Sundar

O R D E R

The revision petitioners are the plaintiffs in the suit in O.S No.616 of 2005 on the file of the learned III Additional District Munsif, Trichy and in the suit, the petitioners/plaintiffs sought for permanent injunction, restraining the respondent/defendant from in any manner interfering with their peaceful possession and enjoyment of suit property. During pendency of the suit, the plaintiffs filed an application in I.A No.299 of 2005 for appointment of advocate commissioner to inspect the suit property, note down its physical features and measurements and submit a report with plan. Admittedly, no inspection was conducted and reported and therefore, after a long gap of time, the petitioner has come up with an application in I.A.1165 of 2017 for re-opening the commission application in I.A.No.299 of 2005, which was closed by the Trial Court on 13.06.2017. The said application was dismissed stating that the application was highly belated and no valid reasons have been assigned therein. Aggrieved by the same, the petitioners are before this Court.

2. It is the case of the revision petitioners that after appointment of Advocate Commissioner, on account of non filing of written statement by the defendant/respondent, he was set exparte and an application was filed to set aside the exparte order, which was allowed on 12.08.2008. It is the further case of the petitioners that the fault was not purely on the part of the petitioners for the delay and therefore, the case has to be reopened for the purpose of execution of warrant by the Commissioner.



3. Heard the learned counsel for the petitioners and the notice to other side is dispensed with, in view of the nature of disposal of this case. This Court also perused the material documents available on record.

WEB COPY

4. It is seen that three Advocate Commissioners were appointed and yet, no report has been filed till now and therefore, the Trial Court dismissed the application with a direction to the petitioner to co-operate for the speedy disposal of the suit. It is also seen that after a lapse of 13 years, now the petitioner has come forward by filing a petition in I.A.No.1165 of 2017 for re-opening the Commission petition, that too, without assigning any valid reasons.

5. Admittedly the suit itself was filed in the year 2005 and the application in I.A.No.299 of 2005 for appointment of Advocate Commissioner was filed before 13 years and the said application was pending more than 13 years. Therefore the order passed by the learned III Additional District Munsif, Tiruchirapalli dated 13.02.2018 by closing the said application does not require any interference by this Court. However, it is for the petitioner to file afresh application seeking the very same relief.

6. In the result,

a) this Civil Revision Petition is dismissed, by confirming the order dated 13.02.2018 made in I.A.No.1165 of 2017 in I.A.No.299 of 2005 in O.S.No.616 of 2005 by the learned III Additional District Munsif, Trichy;

b) Liberty is granted to the petitioner to file afresh application within a period of two weeks from the date of receipt of a copy of this order under order 26 Rule 9 of CPC seeking for appointment of fresh advocate commissioner and on filing of such application, within the time stipulated by this Court, the learned III Additional District Munsif, Trichy is directed to appoint a new advocate commissioner within one week by giving notice to the respondent, with a direction to the Commissioner to inspect the property and file a report within a period of one month from the date of filing such fresh application;

c) learned III Additional District Munsif, Trichy is directed to dispose of the suit within a period of one month thereafter, by conducting the trial on day-to-day basis without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for early disposal of the suit within the time stipulated by this Court as above;



d) the Trial Court, on passing the judgment in the suit within the time frame, is directed to submit a report to this Court within 10 days from the date of judgment in the suit. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar(CS III)

aav

To:

The III Additional District Munsif,
Trichy

COPY TO: THE REGISTRAR (JUDICIAL)
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

1CC TO MR. R. SUNDAR, ADVOCATE SR 74370

KK(ES)

SKN SAR 3

21 8 2018.

3P 4C

C.R.P.(MD)No.1520 of 2018

23.07.2018