

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.2820 of 2015
and
M.P.No.1 of 2015

- 1.M.Krishnamurthy Reddiar (died)
- 2.K.Vijaya
- 3.K.Veeraragavan
- 4.K.Magesh
- 5.S.Nirmala
- 6.Umadevi
- 7.M.Revathi
- 8.Kalavathi

[Petitioners 2 to 8 brought on record as LRs of the deceased sole petitioner viz., M.Krishnamurthy Reddiar vide court order dated 08/07/2018 made in C.M.P.12539, 12541 and 12546/2019 in C.R.P.2820/2015 (CSNJ)] सत्यमेव जयते

... Petitioners

WEB vs. COPY

Jothi Ammal

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decretal order dated 08.04.2015 made in I.A.No.19975 of 2014 in O.S.No.5028 of 2008

& O.S.No.5415 of 2008 & O.S.No.1254 of 2009 & O.S.No.3305 of 2012 on the file of the XI Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.M.V.Krishnan

For Respondent : Mr.Ashok Menon

ORDER

The present Civil Revision Petition has been filed to set aside the fair and decretal order dated 08.04.2015 passed by the XI Assistant Judge, City Civil Court, Chennai in I.A.No.19975 of 2014 in O.S.Nos.5028 & 5415 of 2008 and O.S.No.1254 of 2009 and O.S.No.3305 of 2012.

2.By the impugned order the Court has dismissed the application filed under Order XVI Rule 1,2, & 3 r/w Section 151 of CPC to reopen the petitioner's side evidence to examine the Advocate Commissioner appointed on 12.06.2012 in I.A.No.8155 of 2012 in O.S.No.3305 of 2012 and the Engineer for elucidating material facts relevant to the suits namely O.S.No.1254 of 2009, O.S.No.3305 of 2012, O.S.No.5415 of 2008 and O.S.No.5028 of 2008.

3.The petitioner is the plaintiff in O.S.No.5028 of 2008, O.S.No.1254 of 2009 & O.S.No.3305 of 2012 and the defendant in O.S.No.5415 of 2008. These suits are based on the encroachment of the petitioner's property.

4.The petitioner had filed O.S.No.5028 2008 to direct the respondent to remove and demolish the unauthorised portion of the construction of a wall to width of 2.2 $\frac{3}{4}$ on their Eastern side and to the length of 96 feet from the North to South which had to allegedly intruded into the petitioner's property and to restrain the respondent from putting up for the construction and etc. The respondent also filed written statement in the above suit during July 2009.

5.It is in that suit the petitioner had filed an application in the year 2014 to reopen the evidence to enable the petitioner to examine the advocate commissioner appointed on 12.06.2012 In I.A.No.8155 2012 in O.S.No.3305 of 2012 for elucidating material facts relevant to petitioner's other suits namely O.S.No.1254 of 2009; O.S.No.3305 of 2012 and the suit filed by the respondent against the petitioner in O.S.No.5415 of 2008.

6.The respondent filed a detailed counter and stated that petitioner had already filed E.P.No.2067 of 1991 and during the course of enquiry, two Advocate Commissioners were appointed and their reports were marked during the course of enquiry.

7.After dismissal of E.P.No.2067 of 1991, the petitioner had filed C.R.P.No.9869 of 2002 which was dismissed by this Court on 01.08.2005. It was submitted that since two advocate commissioners were appointed and had inspected the property there was no necessity for one more advocate commissioner to be examined.

8.The petitioner had also filed I.A.No.13894 of 2008 in O.S.No.5415 2008 to appoint an advocate commissioner to inspect the suit schedule property and to note only physical features and the de-facto construction was made by the property. The application was dismissed on 29.11.2010. The petitioner also filed I.A.No.2680 of 2009 in O.S.No.1254 of 2009 for Appointment of an Advocate Commissioner which was also dismissed on 29.11.2010.

9.It was thereafter the petitioner filed I.A No.5654 of 2011 in O.S.No.1254 of 2009 for the same purpose with the help of a surveyor which was allowed on 27.09.2011. In C.R.P.(PD).No.4385 of 2011, when the said order was set aside on 27.09.2011.

10.The petitioner also filed I.A.No.11748 of 2008 in O.S.No.5028 of 2008 for appointment of Advocate Commissioner. The said I.A was dismissed on 29.11.2010. The C.R.P.(PD).No.682 of 2011 filed against the said order was also dismissed by this Court 24.02.2011.

11.In these suits, the petitioner filed I.A.No.19975 of 2014 which was dismissed on 08.04.2015.

12.While dismissing the above application the Court has concluded that the petitioner has abused the Court proceedings and seeks to examine the Advocate Commissioner and therefore same cannot be permitted. If the petitioner wants to examine the Advocate Commissioner to elicit any point with regard to the case he can be permitted to examine the Advocate Commissioner appointed in earlier proceedings in E.P.No.2067 of 1991

13. Aggrieved by the same, the present Civil Revision Petition has been filed.

14. I do not find any merits in the present Civil Revision Petition. The petitioner has filed repeated applications in respect of the same property resulting in multiple collateral proceedings resulting in delay in the disposal of the above suit. It therefore requires no interference by this Court. Accordingly, the present Civil Revision Petition is liable to be dismissed.

15. It is noticed that the suits are of the years 2008, 2009 & 2012. Therefore, the XI Assistant City Civil Court, Chennai is directed to dispose all the suits within a period of nine months from the date of receipt of a copy of this order.

16. The present Civil Revision Petition is disposed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

23.07.2019

Index: Yes/No
Internet: Yes/No
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To

1.The XI Assistant Judge,
City Civil Court,
Chennai.

2.The Section Officer, V.R.Section,
High Court,
Madras.



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C.R.P.(P.D).No.2820/2015

C.SARAVANAN.J.,
jen



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and
M.P.No.1 of 2015

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