

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.No.3414 of 2016
and C.M.P.No.17363 of 2016

E.Selvakumar

... Petitioner

-Vs-

1.R.Radha

E.Jayakumar (Deceased)

2.E.Kanakaraj

3.E.Sivakumar

4.E.Komaleeswari

5.Rani

6.Jayasuriya

7.J.Tamilarasi

8.J.Divakar

9.J.Babu

10.J.Jagatheeswaran @ Kutty

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 26.08.2016 in I.A.No.1418 of 2016 in I.A.No.5301 of 2011 in I.A.No.7428 of 2007 in O.S.No.6261 of 2004 on the file of VII Assistant City Civil Court, Chennai.

For Petitioner : Ms.G.Uma Maheswari

For Respondent : Mr.M.Chidambaram

O R D E R

This revision has been filed against the fair and decreetal order dated 26.08.2016 in I.A.No.1418 of 2016 in I.A.No.5301 of 2011 in I.A.No.7428 of 2007 in O.S.No.6261 of 2004 on the file of VII Assistant City Civil Court, Chennai. .

2. In the said order, the trial Court rejected the application filed by the revision petitioner to scrap the Advocate Commissioner's report dated 12.01.2015 filed in the suit, which is the suit for partition, where, after the preliminary decree, Advocate Commissioner was appointed and after having inspected the property the Advocate Commissioner seems to have filed a report on 12.01.2015. As against the said report, I.A.No.1418 of 2016 was filed, which has been dismissed. Aggrieved over the same, the present revision petition has been filed.

3. Heard Ms.Uma Maheswari, learned counsel for the petitioner, who would submit that, the said application to scrap the Advocate Commissioner's report was filed on the sole

ground that, in the absence of the revision petitioner, who was a party to the suit, the Advocate Commissioner has completed the task and filed the report and therefore, the said report cannot be taken into account by the trial Court as such and it has to be scrapped.

4. However, the learned counsel for the petitioner fairly submits that notice had been served through the counsel for the revision petitioner before the trial Court by the Advocate Commissioner. Having received the notice, since the revision petitioner could not appear at the time of the Advocate Commissioner inspecting the property, on that ground the petitioner seeks the indulgence to scrap the Advocate Commissioner's report.

5. Therefore, the fact remains that the preliminary decree has been passed. Thereafter, Advocate Commissioner has been appointed, who has admittedly issued notice to both the parties and after receipt of the notice, it is for the revision petitioner to appear before the Advocate Commissioner at the time of inspecting the property, but he has not chosen to appear. For such inaction on the part of the revision petitioner, the Advocate Commissioner cannot be blamed and therefore, on that ground the Advocate Commissioner's report cannot be scrapped.

6. I have heard Mr.M.Chidambaram, learned counsel for the respondents, who would submit that after the preliminary decree, Advocate Commissioner was appointed and for the reasons best known to him, the revision petitioner has filed the application to scrap the Advocate Commissioner's report, nearly after 4 years and such action on the part of the revision petitioner is nothing but vexatious one and therefore, the application has been rightly dismissed by the lower Court and hence no interference is called for in the impugned order.

7. Be that as it may. This Court is of the view that though the application to scrap the Advocate Commissioner's report cannot be entertained on the ground urged by the revision petitioner, at the same time, since it is a suit of partition, the plea of the revision petitioner can also be taken into account insofar as any adverse report is filed by the Advocate Commissioner, claimed to be detrimental to the interest of the revision petitioner and in this regard, it is open to the revision petitioner to file objection to the Advocate Commissioner's report, for which 30 days time is granted from the date of receipt of a copy of this order, within which time, if objection is not filed as against the Advocate Commissioner's report, by the revision petitioner, the trial Court can proceed further.

8. In result, this Civil Revision Petition is dismissed with an observation that the revision petitioner can file his

objections to the Advocate Commissioner's report within a period of 30 days from the date of receipt of a copy of this order and if no such objection is filed by the revision petitioner within the time stipulated above, it is open to the trial Court to proceed further in accordance with law. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KST
To

The VII Assistant City Civil Judge, Chennai.

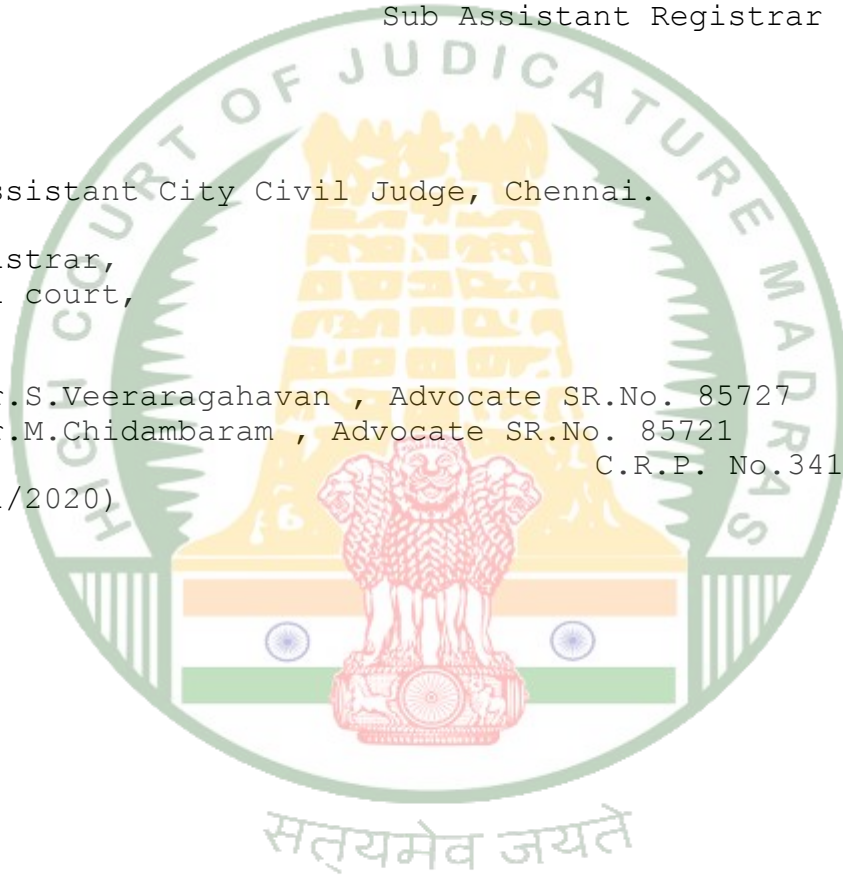
2.The Registrar,
City civil court,
Chennai.

+1cc to Mr.S.Veeraragahavan , Advocate SR.No. 85727

+1cc to Mr.M.Chidambaram , Advocate SR.No. 85721

C.R.P. No.3414 of 2016

A.SK(28/01/2020)



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