

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.1694 of 2014

and

M.P. No.1 of 2014

K. Seethalakshmi Ammal

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Petitioner

Vs

1. Arulmigu Thillai Kaliyamman Temple,
Represented by its Executive Officer,
Arulmigu Thillai Kaliyamman Temple,
Chidambaram,
Cuddalore District.

2. The Assistant Commissioner,
The Hindu Religious and Charitable
Endowment Board,
Cuddalore.

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Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal orders passed in I.A. No.293 of 2011 in O.S. No.150 of 2011, dated 10.02.2014 on the file of the Court of Additional District Munsif, Chidambaram.

For Petitioner

: Mr.A. Muthukumar

For respondents

: Mr.R. Swaminathan for R1

ORDER

The instant Civil Revision Petition has been filed under Article 227 of Constitution of India, challenging the order dated 10.02.2014 passed in I.A. No.293 of 2011 in O.S. No.150 of 2011 by the Court of Additional District Munsif, Chidambaram.

Brief facts leading to the filing of the instant Civil Revision**Petition are as follows :-**

2. The petitioner is the plaintiff in the suit. She filed a suit for permanent injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the suit schedule property. During the pendency of the suit, I.A. No.293 of 2011 in O.S. No.150 of 2011 was filed by the petitioner / plaintiff seeking for appointment of an Advocate Commissioner to note down the physical features of the suit schedule property and also to identify the suit schedule property. A counter affidavit was also filed by the first respondent, who is the first defendant in the suit and the contesting defendant. By order dated 25.07.2011, the Trial Court allowed I.A. No.293 of 2011 filed by the petitioner / plaintiff by appointing an Advocate Commissioner by name Mr.Gunasekaran. Thereafter, since Mr.Gunasekaran could not execute the Advocate Commissioner's warrant, a new Advocate

Commissioner was appointed by name Mr.Titus Kamaraj by the Trial Court on 09.07.2012. According to the petitioner, there was no progress as the newly appointed Advocate Commissioner also did not show interest to execute the Advocate Commissioner's warrant. The petitioner / plaintiff filed a memo seeking for appointment of another Advocate Commissioner to visit the suit schedule property. The said memo dated 10.02.2014 was taken on record by the Trial Court but however, the Trial Court dismissed the application I.A. No.293 of 2011 in O.S. No.150 of 2011 on the same date, as the earlier two Advocate Commissioners appointed by the Court failed to accomplish the task and execute the warrant for the reasons best known to them and the Court thought it fit to close I.A. No.293 of 2011 on the said ground. Aggrieved by the order dated 10.02.2014 in I.A. No.293 of 2011 in O.S. No.150 of 2011, the instant Civil Revision Petition has been filed.

3. Heard Mr.A. Muthukumar, learned counsel for the petitioner and Mr.R.Swaminathan, learned counsel for the 1st respondent. The second respondent has been duly served in this revision and his name has also been printed in the cause list today but there is no appearance on his side.

Discussion :

4. Admittedly I.A. No.293 of 2011 in O.S. No.150 of 2011 was allowed by the Trial Court and the Trial Court had appointed an Advocate Commissioner to note down the physical features of the suit schedule property and also identify the same. It is also an admitted fact that subsequently since the earlier Advocate Commissioner did not execute the Advocate Commissioner's warrant, a new Advocate Commissioner was appointed by the Trial Court. It is also an admitted fact that the second Advocate Commissioner also did not execute the warrant which necessitated the petitioner to file a memo seeking for appointment of a new Advocate Commissioner. These facts are recorded by the Trial Court but however, arbitrarily without any reasons whatsoever has closed the Advocate Commissioner's application viz., I.A. No.293 of 2011 on the ground that the earlier two Advocate Commissioners failed to accomplish the task and execute the warrant for the reasons best known to them.

5. The order passed by the Trial Court is absolutely an erroneous order, as it is an admitted fact that I.A. No.293 of 2011 in O.S. No.150 of 2011 was allowed by order dated 25.07.2011 and there was a delay in execution of Advocate Commissioner's warrant only due to the fact that the Advocate Commissioner appointed by the Trial Court

did not execute the same. For the fault of the Advocate Commissioner, the petitioner cannot be blamed for non execution of the Advocate Commissioner's warrant.

6. In the considered view of this Court, the Trial Court ought to have appointed a new Advocate Commissioner in place of the old one.

7. The learned counsel for the respondent has also not raised any serious objection for allowing this Civil Revision Petition.

8. For the foregoing reasons, the impugned order dated 10.02.2014 passed by the Trial Court in I.A. No.293 of 2011 in O.S No.150 of 2011 is hereby set aside and the Trial Court is directed to appoint a new Advocate Commissioner in I.A. No.293 of 2011 in O.S. No.150 of 2011, on receipt of a memo to be filed by the petitioner / plaintiff before the Trial Court seeking appointment of a new Advocate Commissioner. The petitioner /plaintiff is directed to file a Memo to that effect, within a period of two weeks from the date of receipt of a copy of this order.

ABDUL QUDDHOSE, J.

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9. With the aforesaid directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

18.06.2019

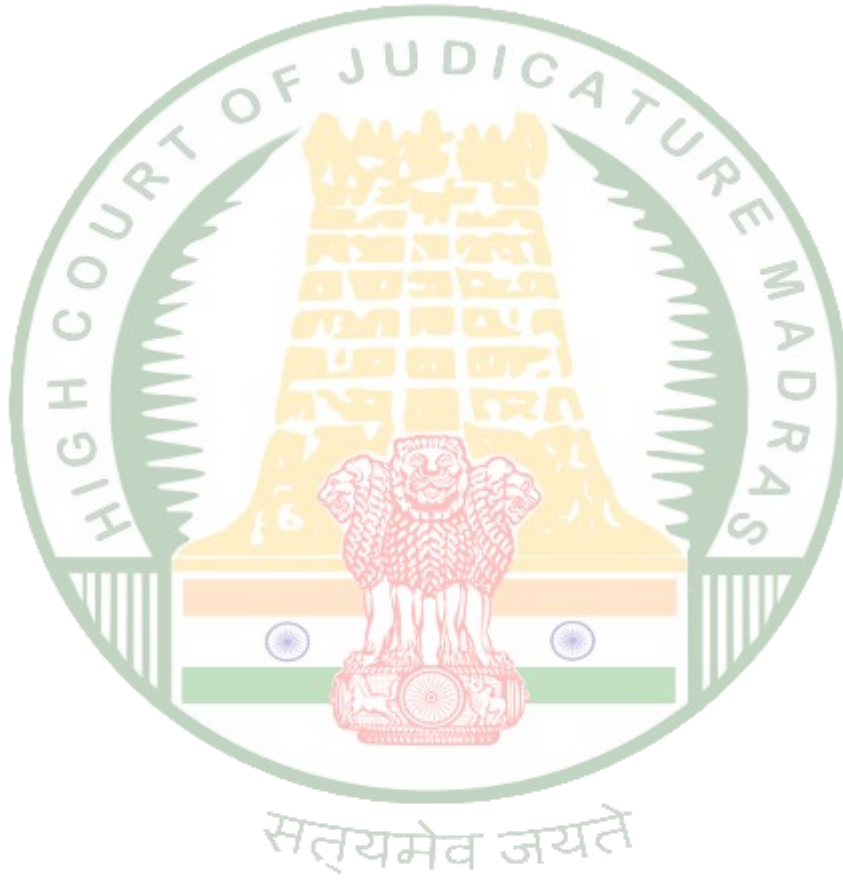
Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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To
The Additional District Munsif, Chidambaram.

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