

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP (PD) Nos.3051 and 3052 of 2018

Captian S.S.Rao (deceased)

1. Mrs.R.S.Rao
 2. Captain Sanjay S.Rao
- ... Petitioners in both CRPs

Vs.

Bay Orient Realty Pvt. Ltd.
Rep. By its Managing Director Fahim I.Sabry
No.47, College Road,
Chennai – 600 006

... Respondent in both CRPs

PRAYER in C.R.P.No.3051 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal Order dated 21.08.2018 passed in I.A.No.3293 of 2015 in I.A.No.19712 of 2012 in O.S.No.12142 of 2010, on the file of II Additional City Civil Court, Chennai.

PRAYER in C.R.P.No.3052 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal Order dated 21.08.2018 made in I.A.No.806 of 2016 in O.S.No.12142 of 2010, on the file of II Additional City Civil Court, Chennai.

For Petitioners in both CRPs	: Mr. R.Krishna Prasad
For Respondent in both CRPs	: Mr. R. Kandasamy

COMMON ORDER

The above civil revision petitions are filed against the order of the Court below in re-opening the application in I.A.No.3293 of 2015 which was closed originally and I.A.No.806 of 2016 for appointing the Commissioner to note down the physical features of the property.

2. The background for filing the above revisions are as follows:

The revision petitioner has originally filed a suit in O.S.No.12141 of 2010 for mandatory injunction by directing the respondents to hand over the original documents. The respondent herein filed a suit for specific performance of contract entered between the revision petitioner and himself. It is not in dispute that both the suits is of the year 2010 and the revision petitioner in his suit has already filed an application for appointment of Commissioner, wherein, the trial Court has appointed the Commissioner by its order dated 09.07.1998 and it appears that the Commissioner has filed a Report which is not challenged and no objection is raised by the respondent herein. The preliminary dispute appears with regard to the alleged improvement made in the property on the basis of the agreement said to have been executed between the parties in a written statement filed by the respondent in a suit filed by the revision petitioner . The categorical stand has been taken to the effect that he developed the property by levelling the ground and digging the pits, except stating the above, no other improvements what so ever pleaded

in the written statement. Such being the position in the year 2015, an application has been filed by the respondent for appointment of Commissioner for noting down the physical feature of the property and to file a Report. This application has been filed in the year 2015 and ordered in the year 2018. The trial Court has simply allowed the application, against which, the present revision is filed.

3. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondent.

4. It is the contention of the revision petitioner that admittedly in both the suits, joint trial were ordered and the Commissioner Report filed in the year 2010 is very much on the record, it has not been objected. The trial Court being noted all the above facts appointing the commissioner once again is nothing but perverse which is not maintainable in law. Similarly, the trial Court has also simply allowed the application to re-open the interlocutory application which was closed long back by the trial Court on the ground that no interest shown by the respondent, whereas, the counsel appearing for the respondent would contend that the revision petitioner under Article 227 is not maintainable. The commissioner is appointed to note down the physical features of the property. There is no prejudice would be caused to the respondent by the revision petitioner. Admittedly, he is not in possession of the property. Therefore, in order to show the nature of improvement made by him, the Commissioner has been appointed and no prejudice what so ever

would be caused in support of his submissions. He has also relied upon the judgments in the case of ***Pentapati China Venkanna and others vs. V.Pentapati Bangararaju and others*** reported in **AIR 1964 Supreme Court 1454**; ***Sudheerkumar vs. Praveena*** reported in **2018 (4) Civil Court Cases 675 (Kerala) (DB)**; ***Jasbir Singh vs. State of Punjab*** reported in **(2006) 47 AIC 4**; ***Mrs.Rena Drego vs. Lalchand Soni, etc*** reported in **(1998) 3 AD(SC) 74** and ***Hameed Kunju vs. Nazim*** reported in **(2017) 179 AIC 90**.

5. Further, it is the contention of the learned counsel for the respondent that interim injunction application should not have been closed without disposing the application on merits. Therefore, the trial Court re-opened the above application also does not require any interference.

6. I have also perused the entire materials.

7. Admittedly, the revision petitioner has filed a suit of mandatory injunction for return of documents. Similarly, the respondent herein has filed a suit for specific performance to enforce the agreement dated 14.01.1996. The suit filed by the revision petitioner, wherein, the commissioner was already appointed to note down the physical features of the property. It is also to be noted that the written statement filed by the respondent pleaded that he levelled the land and dug pits. No other improvements whatsoever pleaded in the written statement. Further, it is also to be noted that the

Commissioner has already appointed to note down the physical features of the property. The above Report is on record. Admittedly, the joint trial is ordered. The Report of the earlier Commissioner has not been challenged either by way of an appeal or by objection. That being the position without scrapping the earlier Report appointing the new Commissioner, after a gap more than 10 years to note down the physical features in view of this Court is nothing but the said order is perverse.

8. The suit has been filed by the respondent to enforce the contract. Therefore, he cannot gather the evidence after a long gap of time through Advocate Commissioner. Admittedly, with regard to the alleged improvements, the pleadings are already complete. Now, contrary to the pleading, the Commissioner cannot be appointed to gather the evidence. Similarly, at the earliest point of time, the Commissioner is appointed and his Report is also available on record, without any challenge. Being made appointment of any advocate Commissioner is nothing but perverse, therefore the order of the trial Court needs interference and the same is set aside. However, re-open of the application which was closed, such order does not require any interference.

9. Accordingly, the C.R.P.No.3051 of 2018 is dismissed and C.R.P.No.3052 of 2018 is allowed. No costs.

N.SATHISH KUMAR, J.

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10. The Trial Court shall dispose of the suit within a period of three months from the date of receipt of a copy of this order. The trial Court shall not give any importance to interlocutory applications at this stage.

22.04.2019

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Index:Yes/No

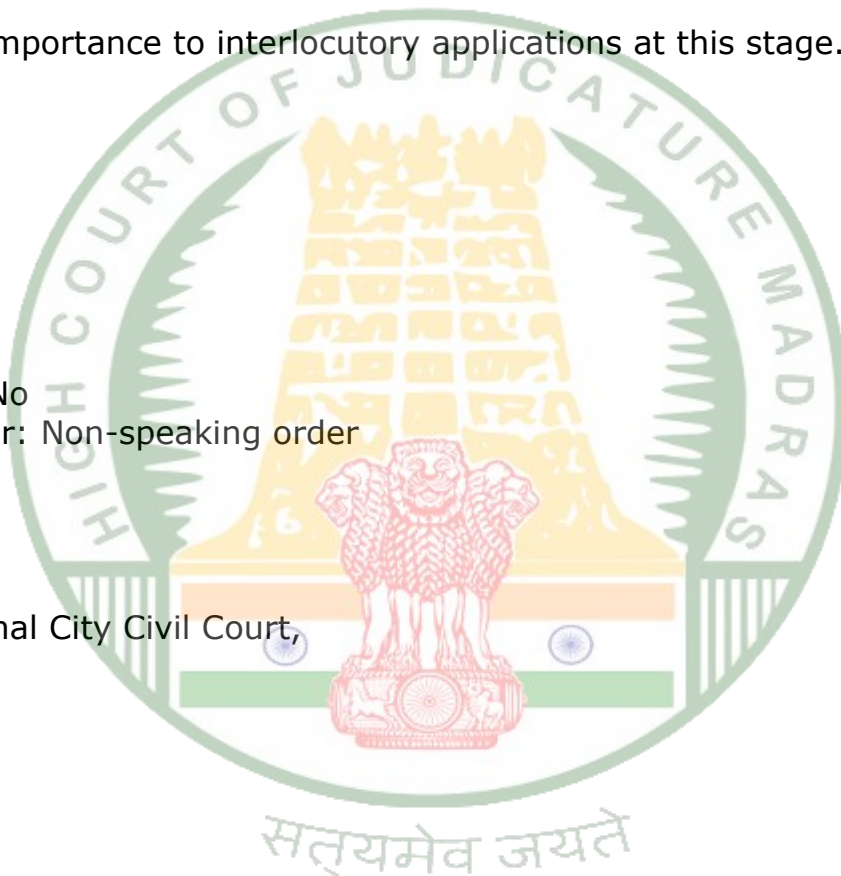
Internet:Yes/No

Speaking order: Non-speaking order

To

The II Additional City Civil Court,

Chennai.



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