

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2020

PRONOUNCED ON : 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.1748 of 2016
CMP.No.

(Through Video Conferencing)

Rajeswari

Petitioner

Vs

1. Gunasekaran
2. Sathiyabama
3. The State of Tamil Nadu by District Collector
Erode
4. The Tahsildar, Erode
5. The Village Administrative Officer
Vadugapatti Village, Erode

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decreetal order, dated 08.12.2015 made in IA.No.1052 of 2015 in IA.No.407 of 2014 in OS.No.240 of 2014 by the I Additional District Munsif Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.S.Kesavan

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal

order dated 08.12.2015, made in IA.No.1052 of 2015 in IA.No.407 of 2014 in OS.No.240 of 2014 by the I Additional District Munsif Court, Erode.

2. The facts of the case are that the Plaintiff is the Petitioner herein and the Defendants are the Respondents. The suit was filed for permanent injunction restraining the Defendants 1 and 2 from trespassing into the suit properties and disturbing the peaceful possession and enjoyment of the Plaintiff over the suit properties and to appoint a Commissioner to fix F-Line between the properties of the Plaintiff and the Defendants 1 and 2 and to direct the Defendants 3 to 5 to grant patta in favour of Plaintiff in respect of the suit properties. The Plaintiff has filed IA.No.407 of 2014 to appoint an Advocate Commissioner to note down the physical features of the suit properties and since the Advocate Commissioner appointed by the court below was not able to file the report and plan, the said IA was closed on 04.07.2015. Hence, the Plaintiff has filed the present IA.No.1052 of 2015 to reopen IA.No.407 of 2014 for the purpose of getting the Advocate Commissioner's report with plan. By the impugned order, the present IA was dismissed. Hence, this Civil Revision Petition has been filed by the Plaintiff.
3. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
4. According to the Petitioner, since the physical features of the suit properties are disputed and in order to establish the real picture, appointment of Commissioner and his plan and report are necessary.
5. It is the case of the Respondents that the Plaintiff did not take any steps to

execute the warrant, by paying necessary fees to the Commissioner and necessary batta to the Taluk Surveyor and hence, the present IA to reopen the earlier IA, seeking appointment of Commissioner cannot be entertained.

6. IA.No.407 of 2014 was filed on 12.05.2014, seeking appointment of a Commissioner to measure the suit properties, with the help of the Taluk Surveyor. The Commissioner was appointed on 15.5.2014. Since the Plaintiff did not take any steps to execute the warrant, by paying necessary fees to the Commissioner and necessary batta to the Taluk Surveyor and for non filing of the report and plan, the said IA was closed on 04.07.2015. The present IA to reopen IA.No.407 of 2014 has been filed on 31.08.2015 after more than six weeks.

7. The court below has observed that there is no material available that any steps was taken by the Petitioner to inspect the suit property and to summon the Surveyor. Having got the appointment of the Commissioner in the month of May 2014, the Plaintiff did not take any steps to execute the warrant, by paying necessary fees to the Commissioner and necessary batta to the Taluk Surveyor through the Court Commissioner and only because the Plaintiff failed to take steps, IA.No.407 of 2014 was closed. If at all he has got any interest, he should have taken necessary steps, but he failed to do so. Further, the Petitions have been filed belatedly. There is no proper and valid explanation forthcoming from the Petitioner for the same. Considering those aspects, the court below has rightly dismissed the present IA, by the impugned order, which warrants no interference.

8. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

17.12.2020

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Srcm

To

1. The Additional District Munsif Court, Erode

Pre-Delivery Order in
CRP(PD)No.1748 of 2016



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