

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

Review Application No.119 of 2019

in

C.R.P.No.424 of 2019

Mrs.Jagavalli ... Petitioner

Vs.

1.Mr.Sitharthanan

2.Mr.Dinakaran ... Respondents

Prayer: Review Application filed under Section 114 of Civil Procedure Code r/w Order 47 Rule 1 praying to allow this review application by setting aside the order in C.R.P.No.424 of 2019 dated 13.03.2019.

For Petitioner : Mr.M.Vijayakumar

For Respondent 1 : Mr.K.Elango

ORDER

The above petition is filed to review the order dated 13.03.2019 passed by this Court. The ground on which the review was argued is that in paragraph no.8 of the said order this Court has wrongly observed as follows:

"However, on 02.12.2010 a memo was filed returning the warrant and a new Advocate Commissioner was appointed. The 'A' diary extract does not reveal if the new commissioner was appointed pursuant to an application being filed to this effect."

The learned counsel would submit that this statement is erroneous. However, he has not produced any documents to show that an application was moved for appointment of an Advocate Commissioner.

2. That apart, once again when the Court peruses the A – Diary extract of the date 02.12.2010 it reads as follows:

"Memo filed by Advocate Commissioner and recorded. Hence Mr.V.Muthuraman is appointed as new Advocate Commissioner and he is directed to inspect the suit property along with the Taluk Surveyor as early ordered. The remuneration is fixed at Rs.2500/- to be paid directly to him. Commissioner Report and plan 22.12.2010."

3. Therefore the order is silent on whether an application has been moved and the order was passed on such application. The order does not reflect the number of the application moved and the advocate Commissioner been appointed.

4. The next argument that was advanced by the learned counsel appearing for the petitioner was that in paragraph no.12 of the order this Court has stated as follows:

"Since the earlier application has already been ordered, this Court is not referring to the said affidavit except for stating that a reading of affidavit would

clearly show that, it is an attempt on the part of the defendants to collect evidence for proving possession."

He would submit that this statement is wrong. This Court is unable to find how the statement is wrong since this Court has only stated that as the earlier application, namely, I.A.No.1240 of 2008 in I.A.No.805 of 2008 had been ordered the Court is not proceeding to reproduce the statements made therein.

5. The Court had arrived at a conclusion that an application in I.A.No.49 of 2018 in I.A.No.373 of 2009 deserves to be dismissed on two grounds:

i) In a suit for bare injunction there cannot be an appointment of Advocate Commissioner to collect the evidence. This Court in the said order has also stated that if circumstances arose the Court can appoint the Advocate Commissioner even in a suit for bare injunction. However, in the case on hand such circumstance has not arisen. There was no necessity to appoint an Advocate Commissioner .

ii) The second point on which the Court had deemed it fit to set aside the order was on the ground of laches.

5. I do not find any ground to review the earlier order. The Review Application stands dismissed. No costs.

20.02.2020

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Speaking Order/ Non Speaking Order

Index: Yes / No

Internet: Yes / No



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P.T. ASHA. J,

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