

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.4812 of 2014

and

MP.No.1 of 2014

Ramajayam

... Petitioner/Plaintiff

Versus

1.Sounderrajan

2.Sivanesan

...Respondents/Defendants

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.09.2013, passed in I.A.No.671 of 2010 in O.S.No.205 of 2006, on the file of the District Munsif Cum Judicial Magistrate Court, Omalur.

For Petitioner : Mr.P.Mani

For R1 : M/s.Vanathi Srinivasan

For R2 : No appearance

ORDER

This Civil Revision Petition has been filed against the order passed by the learned District Munsif Cum Judicial Magistrate Court, Omalur, in I.A.No.671 of 2010 in O.S.No.205 of 2006, dated 16.09.2013.

2 The plaintiff in the suit O.S.No.205 of 2006 is the revision petitioner herein.

3 The revision petitioner/plaintiff has filed a suit in O.S.No.205 of 2006 before the learned District Munsif, Omalur, seeking for declaration of his title over the suit property and for permanent injunction. During the pendency of the suit, the revision petitioner/plaintiff has filed an application in I.A.No.879 of 2006 for appointment of the Advocate Commissioner under Order 26 Rule 9 and Section 151 of CPC and the said application was dismissed. Hence, revision petitioner/plaintiff has filed a petition in CRP.No.1617 of 2007, before this Court. This Court has dismissed the said petition, however, giving opportunity to the petitioner/plaintiff to prove the prima facie case by adducing evidence. With the said liberty, CRP.No.1617 of 2007 was dismissed.

4 Pursuant to the order passed in the above said CRP, the revision petitioner/plaintiff has filed I.A.No.671 of 2010, before the learned District Munsif cum Judicial Magistrate, Omalur, under Order 26 Rule 9 for appointment of Advocate Commissioner to inspect the suit property and to measure the same with the help of VAO(Village Administrative Officer) and to clarify with surveyor and

to note down physical features and to file report therein with plan.

5 In the enquiry, on behalf of the plaintiff, the revision petitioner/plaintiff was examined himself as PW1 and marked Exs.P1 to P8. On behalf of the respondent no oral or documentary evidence has been marked.

6 From the records, the learned District Munsif cum Judicial Magistrate, Omalur, has held that since the earlier application was dismissed in I.A.No. 879 of 2006 and no new facts have been placed before the Trial Court, and accordingly, dismissed the application and hence, the present Civil Revision Petition.

7 Heard the learned counsel for the petitioner and learned counsel for the first respondent.

8 The learned counsel for the respondent stated that the earlier application for appointment of Advocate Commissioner in I.A.No.879 of 2006 was confirmed in the CRP(PD).No.1617 of 2007 on 11.06.2007.

9 After perusing the earlier order passed by this

Court, this Court finds that there is clear observation that the Trial Court has to consider the application on filing the documents. In order to make out the *prima facie* case, the petitioner/plaintiff has filed this application and also marked Ex.P1/Sale Deed, Ex.P2/Patta Pass Book subsequent Sale Deed in his favour in Exs.P3 & P4 and Exs.P5 to P8/Kist received from the year 2007 to 2010 were also marked. Without considering the above said document and also oral evidence of PW1, without applying his mind as to the observation made by this Court in CRP.No. 1617 of 2007, it appears that a mechanical order has been passed by the learned District Munsif cum Judicial Magistrate, Omalur in rejecting the application on the ground that earlier IA for similar relief was dismissed. Such a mechanical attitude of the learned District Munsif is regretted.

10 In view of the observation made by this Court in CRP.No.1617 of 2007 and taking into consideration the oral and documentary evidence viz., PW1 and Ex.P1 to P4, this Court is of the considered view that the order passed by the learned District Munsif cum Judicial Magistrate, Omalur, suffers from error apparent on the face of the record and also non application of the order which the learned District Munsif cum Judicial Magistrate ought to have exercised before dismissing the application and hence, the Civil

Revision Petition is allowed. The order passed in I.A.No. 671 of 2010, dated 16.09.2013 is hereby set aside. The Trial Court is hereby required to appoint the Advocate Commissioner within a period of three weeks from the date of receipt of a copy of this order with a direction to the Advocate Commissioner to make the inspection and file a report within a period of eight weeks thereafter. There shall be a further direction to the learned District Munsif cum Judicial Magistrate, Omalur, to dispose of the suit within a period of twelve weeks thereafter and file compliance report to this Court.

11 In the result, the Civil Revision Petition stands allowed with the above directions and the order passed by the learned District Munsif cum Judicial Magistrate, Omalur, in I.A.No.671 of 2010 in O.S.No.205 of 2006, dated 16.09.2013, is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is also closed.

27.01.2020

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Speaking Order: Yes/No

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RMT.TEEKAA RAMAN., J.

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Note to the Registry: After perusing the order passed in I.A.No.671 of 2010, it appears that the learned District Munsif cum Judicial Magistrate, Omalur, without perusing to the earlier order passed by this Court, in the very same proceedings, has passed mechanical order on non application and hence, the Registry is directed to call for explanation from the Judicial Official Office as to the conduct in over looking the order passed by the this Court in CRP.No.1617 of 2007 within a period of three weeks and submit before this Court.

To
The District Munsif Cum Judicial Magistrate Court, Omalur.

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and
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