



C.R.P (PD). No.920 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2021**

CORAM

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

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and C.M.P.No.5997 of 2019

M/s.P.N.K.N.Builders,
Represented by its Proprietor,
Mr.N.Baranitharan,
No.57, Radha Nagar Main Road,
Chrompet,
Chennai 600 044

.. Petitioner

Vs

M.Kannan

..Respondent

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decretal order dated 11.08.2018 made in I.A.No.373 of 2017 in O.S.No.608 of 2013 on the file of the Additional District Munsif Court, Alandur, Kancheepuram District and allow the revision petition.

For Petitioner : Mr.A.Bharathi

For Respondent : No Appearance

ORDER

The revision is directed against the order dated 11.08.2018 made in I.A.No.373 of 2017 in O.S.No.608 of 2013, dismissing the application



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seeking to appoint an Advocate Commissioner to inspect and note down the physical features of the petition mentioned properties along with stages of building and file report before the Court below.

2. The revision petitioner herein is the plaintiff in O.S.No.608 of 2013 for the relief of declaration and other consequential reliefs. The defendant filed the written statement to contest the suit. During the pendency of the suit, earlier the petitioner filed an application in I.A.No.1270 of 2013 to appoint an Advocate Commissioner to inspect and note down the physical features of the suit schedule property and an Advocate Commissioner was also appointed, however, he did not file any report. Hence, the trial Court closed the said I.A on 22.09.2016. Thereafter, the petitioner filed another application in I.A.No.373 of 2017 on the file of the Additional District Musnif, Alandur, in which, the defendant remained ex-parte. The trial Court concluded that unless without scrapping the earlier Advocate Commissioner's report, a new Commissioner cannot be appointed. Accordingly, the said application was dismissed. Aggrieved over the same, the plaintiff has come forward with this revision.



3. Heard the learned counsel for the petitioner and perused the records. There is no representation on behalf of the respondent.

4. On perusal of the records, it reveals that the petitioner/plaintiff filed the suit for declaration and other consequential reliefs. The defendant filed the written statement denying the plaintiff's contentions. Earlier I.A.No.1270 of 2013 was closed due to non filing of commissioner's report. But, the trial Judge, while dismissing the I.A.No.373 of 2017, observed that without scrapping the earlier Commissioner's report, second application for appointment of Commissioner, could not be entertained.

5. As discussed above, the earlier application in I.A.No.1270 of 2013, the Advocate Commissioner has not filed the report for the reasons best known to him. Since as on date, no report was filed by the Advocate Commissioner in the suit before the trial Court, scrapping of the earlier report would not arise. Without appreciating the fact, the trial Court Judge erroneously dismissed the I.A.No.373 of 2017, which was filed for appointment of the new Advocate Commissioner. In order to prove his claim over the property, the petitioner/plaintiff had filed such application, which would not cause any prejudice to either of the parties to the suit. Hence, this



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Court is inclined to set aside the order passed by the trial Court.

Accordingly, the order passed by the learned Additional District Munsif, Alandur, Kancheepuram District in I.A.No.373 of 2017 in O.S.No.608 of 2013, is hereby set aside and the Civil Revision Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

02.11.2021

Internet : Yes/No

Index : Yes/No

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To

The Additional District Munsif Court,

Alandur, Kancheepuram District



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T.V.THAMILSELVI, J.

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