



C.R.P. No.2356 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.11.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.2356 of 2021

Kalaivanan

..Petitioner

Versus

1. Saraswathiammal
2. S.Rajasekar
3. S.Ravichandran
4. S.Ramamurthy

...Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order and decretal order passed in I.A. No.289 of 2019 in O.S. No.196 of 2008 dated 15.04.2021 by the District Munsif Court, Sripermbudur.

For Petitioner : Mr. M.Manivannan

ORDER

This petition is filed challenging the order passed in I.A. No.289 of 2019 in O.S. No.196 of 2008 on 15.04.2021 by the learned District Munsif, Sriperumbudur.



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2. Learned counsel for the petitioner submitted that the petitioner filed a suit in O.S. No.196 of 2008 seeking the relief of delivery of vacant possession of 'B' Scheduled property and for other reliefs. It is submitted by the learned counsel for the petitioner that the petitioner earlier filed a petition for appointment of Advocate Commissioner in I.A. No.6 of 1999 and an Advocate Commissioner was appointed. The petitioner paid Commissioner's fee. However, the Advocate Commissioner has not taken any steps to inspect the property and file a report. Therefore, I.A. No.289 of 2019 was filed for appointment of Advocate Commissioner with the assistance of Taluk Surveyor to identify and measure 'A' and 'B' Suit Scheduled property. This petition was dismissed by the learned District Munsif Judge, Sriperumpudur. Against the said dismissal, this Civil Revision Petition is preferred.

3. It is submitted and reiterated that the appointment of Advocate Commissioner to inspect the suit property with the assistance of Taluk Surveyor is absolutely necessary for effectively adjudicating the case between the parties. The petitioner is not responsible for the Advocate Commissioner not inspecting the property and filing the report. Therefore, the order of District Munsif Judge, Sriperumpudur, has to be set aside.



4. Considered the submission of the learned counsel for the petitioner and perused the records.

5. The records and order of learned District Munsif Judge, Sriperumpudur, shows that the suit was filed in the year 1999. The Advocate Commissioner was appointed in I.A. No.6 of 1999. It appears that since no further proceedings had been taken in pursuance of the order appointing the Advocate Commissioner, the application for appointment of advocate commissioner in I.A. No.6 of 1999 was closed on 16.07.2003. Then the suit was transferred from the file of District Munsif Court, Poonamallee to the file of District Munsif Court, Sriperumbudur and renumbered as O.S. No.196 of 2008. It appears that the petitioner again filed I.A. No.1712 of 2011 for appointment of Advocate Commissioner to inspect the suit property along with the Taluk Surveyor. This petition was also closed on 22.11.2017 for not taking any steps. Now the petitioner has filed I.A. No.289 of 2019 for the relief of appointment of Advocate Commissioner with the assistant of Taluk Surveyor to inspect the suit property.

6. As narrated above, the suit was filed in the year 1999. The petitioner had already filed I.A. No.6 of 1996 and I.A. No.1712 of 2011 for the



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appointment of Advocate Commissioner. Even after the appointment of Advocate Commissioner, the petitioner has not taken any steps for executing the warrant of the Advocate Commissioner. It is the submission of the learned counsel for the petitioner that the petitioner cannot be held responsible for the Advocate Commissioner not inspecting the property and filing report. It cannot be accepted for the reason if that the Advocate Commissioner was not cooperating and executing the Commissioner warrant, petitioner is expected to inform the Court by filing a memo and seek to appoint another Advocate Commissioner. This has not been done in this case. Other reason submitted by the learned counsel for the petitioner is that the Advocate Commissioner is no more practising as an advocate and she was already paid counsel's fee.

7. It is seen that the petitioner has not informed the Court about the non-cooperative attitude of the Advocate Commissioner in executing the Commissioner's warrant. In the considered view of this Court, the very fact that the petitioner had already filed two advocate commissioner applications and has not diligently taken steps for execution of commissioner's warrant, shows that the petitioner's only intention is to drag the proceedings. The suit was filed in the year 1999 and it is still pending without any progress. Learned District Munsif Judge, Sriperumpudur, has considered all these aspects and rightly



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dismissed the petition.

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8. This Court finds no reason to interfere with the order passed by the District Munsif Judge, Sriperumpudur, in I.A. No.289 of 2019 in O.S. No.196 of 2008 dated 15.04.2021. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.11.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order
bkn

Copy to:
The District Munsif Judge, Sriperumpudur



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G.CHANDRASEKHARAN, J.,

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