



C.R.P. (PD) Nos. 2072 & 2073 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 19.11.2021

CORAM:

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

C.R.P.(PD).Nos.2072 & 2073 of 2017

and

CMP.Nos.9966 & 9967 of 2017

R.Udayakumar

...Petitioner in both petitions

Versus

D.Kalpana

...Respondent in both petitions

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.16477 of 2016 in I.A.No.4078 of 2015 in O.S.No.1389 of 2015 dated 19.09.2016 and 27.02.2017, on the file of the City Civil Court, XII Assistant Judge, Chennai.

For Petitioner : Mr.R.Thiyagarajan
(in both petitions)

For Respondent : Mr.P.Sreenivasulu
(in both petitions)



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COMMON ORDER

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These Civil Revision Petitions have been filed by the petitioner against the respective fair and decretal orders passed in I.A.No.16477 of 2016 in I.A.No.4078 of 2015 in O.S.No.1389 of 2015 dated 19.09.2016 and 27.02.2017 on the file of the City Civil Court, XII Assistant Judge, Chennai.

2. The petitioner herein is the plaintiff in O.S.No.1389 of 2015 and the same is filed against the respondent/defendant herein for permanent injunction restraining the respondent from interfering with his peaceful possession and enjoyment of A schedule property. Along with the suit, the petitioner also moved two applications seeking for grant of interim injunction and for appointment of Advocate Commissioner to note down the physical features with the help of Taluk Surveyor, Koyambedu.

3. The respondent resisting the above said two applications by filing counter affidavits. Later, the respondent had reported no objection to the Court below for appointment of the Advocate Commissioner to measure the petitioner's property. Accordingly, the Court below has also appointed the Advocate Commissioner. While so, the petitioner has failed to pay the Advocate Commissioner's remuneration and also failed to take necessary steps



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to provide necessary assistance to the Advocate Commissioner with the Taluk Surveyor to inspect the property. In such circumstances, the Advocate Commissioner has returned the warrant and consequently, the Court below, vide order dated 19.09.2016, dismissed the petition in I.A.No.4078 of 2015 on the ground that the petitioner has not paid the remuneration till 12.08.2016 and hence, for non-payment of remuneration and non-cooperation of the petitioner, the IA came to be dismissed.

4. Later, the petitioner moved another interlocutory application in I.A.No.16477 of 2016 under Order IX Rule 9 of CPC seeking to restore the I.A.No.4078 of 2015 which was dismissed by the Court below on 19.09.2016 for non payment of remuneration and non cooperation. According to the petitioner, he was not in a position to approach his counsel and to get the assistance of the Taluk Surveyor since his only son had passed away in a road accident. However, by order dated 27.02.2017, the Court below, vide a detailed order, also dismissed the said application. Aggrieved by the said orders, the petitioner has come forward with the present two Civil Revision Petitions.



5. Heard the learned counsel appearing for the parties and perused the entire materials available on records.

6. The petitioner has filed the suit, seeking for permanent injunction against the respondent/defendant. The circumstances under which the petitioner was unable to approach his Advocate and to provide assistance to the Advocate Commissioner and failed to make payment of remuneration was due to sudden death of his only son in a road accident. Therefore, in the interest of justice, this Court is of the view that the orders of the Court below can be set aside in order to provide an opportunity to the petitioner to proceed with his suit by awarding cost of Rs.5,000/- payable to the respondent/defendant.

7. Accordingly, these Civil Revision Petitions are allowed and the orders of the trial Court in I.A.Nos.16477 of 2016 in I.A.No.4078 of 2015 dated 19.09.2016 and 27.02.2017 are hereby set aside subject to the payment of cost of Rs.5,000/- by the petitioner directly to the respondent/defendant within a period of fifteen days from the date of receipt of copy of this order and also the petitioner is directed to co-operate with the Advocate Commissioner. If the petitioner fails to comply with the above, the relief granted under this order will automatically get ceased to operate without any further reference to this Court.



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8. On production of proof of payment of costs by the petitioner, the trial Court is directed to restore the I.As and proceed to dispose of the same in accordance with law. No costs. Consequently connected miscellaneous petitions are closed.

19.11.2021

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Index: Yes/ No

Speaking Order / Non-Speaking Order

To

The City Civil Court,
XII Assistant Judge,
Chennai.



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S.KANNAMMAL, J.,

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