

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3252 of 2017
and C.M.P.No.15197 of 2017

Sakthivel

.. Petitioner

Vs.

1.Ramachandran

2.Santhi

3.The Commissioner,
Thiruvarur Municipality,
Thiruvarur Town & Taluk,
Thiruvarur District.

4.The Tahsildhar,
Thiruvarur Town & Taluk,
Thiruvarur District.

5.The District Collector,
Office of the District Collectorate,
Thiruvarur Town & Taluk,
Thiruvarur District.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 08.06.2017 made in I.A.No.219 of 2017 in O.S.No.53 of 2013 on the file of the District Munsif Court, Thiruvarur.

For Petitioner : Mr.K.J.Parthasarathy

For Respondents : Mr.J.Nandagopal (For R1)

No appearance (For R2)

Dr.S.Suriya (For R3 to R5)
Government of Counsel (CS)

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and decreetal order dated 08.06.2017 made in I.A.No.219 of 2017 in O.S.No.53 of 2013 on the file of the District Munsif Court, Thiruvarur.

2.The petitioner/plaintiff filed O.S.No.53 of 2013 on the file of the District Munsif Court, Thiruvarur, against the respondents for declaration and permanent injunction. The respondents 1 and 2 filed written

statement on 17.09.2013, the 3rd respondent filed written statement in the month of November, 2013 and are contesting the suit. The petitioner filed I.A.No.210 of 2013 under Order XXVI Rule 9 of C.P.C., for appointment of an Advocate Commissioner to inspect and measure the property with the help of Surveyor and to file a report along with the plan. After contest, the respondents 1 and 2 filed counter affidavit and opposed the said application. The learned Judge, by the order dated 11.02.2014, appointed Mrs.E.Latha, as the Advocate Commissioner. The Advocate Commissioner inspected the property along with the Town Surveyor of the 3rd respondent Municipality and measured the property in the presence of parties and their Advocate. She filed another report stating that the extent mentioned in the Warrant of Commission differs from the extent available in the records and could not fix the boundaries and measure the property. She further stated that necessary amendment has to be carried out in the petition. The counsel appeared for the petitioner before the Trial Court and made endorsement that the petitioner has no objection for the said interim report. Subsequently, after such endorsement, the petitioner filed I.A.No.54 of 2016 to condone the delay

in filing objection to the interim report filed by the Advocate Commissioner. The learned Judge, by the order dated 24.03.2016, ordered the said I.A. Even after the order passed in I.A.No.54 of 2016 and after taking number of adjournments, the petitioner did not file any objection to the interim report of the Advocate Commissioner.

2(i) The learned Judge, verified the Court records and memo filed by the Advocate Commissioner and found that the petitioner has not cooperated with the Advocate Commissioner to execute the Warrant of Commission and closed the said I.A., holding that during or after trial if Court requires any clarification, the petitioner can file application for appointment of the Advocate Commissioner and posted the suit for trial in the special list on 01.03.2017. The petitioner, on 03.03.2017, filed the present I.A.No.219 of 2017 for appointment of Advocate Commissioner on the very same averments made in earlier I.A.No.210 of 2013. The respondents 1 and 2 filed counter affidavit and opposed the said I.A. The learned Judge, considering the earlier order dated 01.02.2017, passed in I.A.No.210 of 2013 and averments in the affidavit filed in support of the

present I.A., dismissed the application.

3. Against the said order dated 08.06.2017 made in I.A.No.219 of 2017 in O.S.No.53 of 2013, the petitioner has come out with the present Civil Revision Petition.

4. Heard Mr.K.J.Parthasarathy, learned counsel appearing for the petitioner, Mr.J.Nandagopal, learned counsel appearing for the 1st respondent as well as Dr.S.Suriya, learned Government of Counsel (CS), appearing for the respondents 3 to 5 and perused the entire materials available on record.

5. Though notice has been served on the 2nd respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

6. From the materials on record, it is seen that in the suit filed by the petitioner, on the application filed in I.A.No.210 of 2013, the Advocate Commissioner was appointed by the learned Judge. The

Advocate Commissioner inspected the suit property and measured the property with the help of Town Surveyor, in the presence of parties and their Advocate and filed interim report. The petitioner and respondents did not file any objection to the said interim report, inspite of number of adjournments. From the order of the learned Judge dated 01.02.2017 made in I.A.No.210 of 2013, it is seen that the petitioner has not taken any steps to execute the Warrant of Commission by the Advocate Commissioner. It is not the case of the petitioner that the Advocate Commissioner was delaying in execution of the Warrant of Commission. By the order dated 01.02.2017 made in I.A.No.210 of 2013, the learned Judge has held that already Advocate Commissioner inspected and measured the property and filed interim report and after trial, if Court requires any clarification with regard to measurement, the petitioner can file application for appointment of Advocate Commissioner and closed the said I.A. The petitioner has not challenged the said order. When the suit was posted for trial in the special list, again the petitioner has come out with the present I.A. for appointment of Advocate Commissioner, for the very same relief.

7.The learned Judge considering the averments in the affidavit, counter affidavit, interim report filed by the Advocate Commissioner and order dated 01.02.2017 made in I.A.No.210 of 2013, dismissed I.A., holding that for the relief sought for in the suit, the issue can be decided with available materials and if any doubt arises with regard to measurement of the suit property, the Court can get clarification and petitioner can be directed to file application for appointment of Advocate Commissioner. Considering the entire materials on record, this Court is of the view that there is no error or irregularity in the order of the learned Judge warranting interference by this Court.

For the above reason, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
gsa

V.M.VELUMANI, J.

gsa

To

- 1.The District Munsif,
Thiruvarur.
- 2.The Commissioner,
Thiruvarur Municipality,
Thiruvarur Town & Taluk,
Thiruvarur District.
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