



C.R.P.No.1079 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.1079 of 2017

and

C.M.P.No.5178 of 2017

Jayapandurangan

...Petitioner

Vs.

1.I.M.Jamal Mohideen

2.J.Mohamed Shahid

3.Balaguru

Ramani (deceased)

4.P.S.Moorthy

5.M.Y.Fakrudeen Ali

...Respondents

Civil Revision Petition has been filed under Article 227 of Constitution of India, praying to set aside the fair order and decretal order dated 17.02.2017 passed in I.A.No.16496 of 2016 in O.S.No.1217 of 2013 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai and direct the Trial Court to re-open I.A.No.16496 of 2016 in I.A.No.14287



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of 2014 in O.S.No.1217 of 2013 for enquiry on the admissibility of Advocate Advocate Commissioner's Report and decide the same on merits and in accordance with law within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.P.Mohanraj
For Respondents : Not available

ORDER

This Civil Revision Petition has been filed by the plaintiff against the defendants in O.S.No.1217 of 2013 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai for the relief of permanent injunction, more particularly, with regard to the common passage.

2. The defendants have also appeared before the trial Court and filed their written statement.

3. The plaintiff filed an application in I.A.No.14287 of 2014 for appointment of Advocate Commissioner and the Advocate Commissioner was appointed to inspect the suit property. Thereafter, the Advocate Commissioner filed a report and in that report, there is lack of particulars with regard to the physical features of the suit property. Hence, the plaintiff



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filed the objection to that report, so also the defendants. The trial Court has not given any findings to the objections submitted by both sides and not ordered for re-visit of the Advocate Commissioner. As trial Court refused to take the application and against the same, C.R.P.(PD)No.2541 of 2016 was filed before this Court. The same was allowed by this Court directing the trial Court to decide the re-opening of the application on merits and in accordance with law. Thereafter the said application was taken on file by the trial Court in I.A.No.16496 of 2016 and on hearing both sides, the trial Judge dismissed the said application stating that if at all the plaintiff has any objections with regard to the Advocate Commissioner report, he is having an ample opportunity to cross-examine him. Therefore, there is no necessity to re-open the application and the prayer as in that application was also not maintainable. Challenging the said findings, the plaintiff preferred this revision.

4. The learned counsel for the petitioner submits that at his request the Advocate Commissioner was appointed in order to note down the physical feature of the suit property to prove his claim over the property.



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However, the Advocate Commissioner failed to note down the physical feature of the suit property. Therefore, the plaintiff filed objections to the Advocate Commissioner report but the trial Court not given any findings with regard to objections given by the plaintiff instead of that the trial Court insisted the plaintiff to cross-examine the Advocate Commissioner as a witness. The physical features of the said property has to be established before the trial with the help of the Advocate Commissioner's report alone. If there is any lack of particulars in the Advocate Commissioner's report, the plaintiff will not be able to prove his case before the trial Court. The learned trial Judge without appreciating all these facts, simply directed the plaintiff to cross-examine the Advocate Commissioner and the same is unwarranted.

5. There is no representation on the side of the respondent.

6. On considering the submissions made by the learned counsel for the revision petitioner as well as on perusal of records, it is clear that the plaintiff had filed a suit for permanent injunction with regard to the dispute between the common passage. The defendants have denied the plaintiff's



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claim over the property. Moreover, the report of the Advocate Commissioner is objected by both the plaintiff and the defendants. In such circumstances, the trial Court ought to have issued warrant to the Advocate Commissioner to re-visit the property and to file additional report. Instead of that, the trial Court found some technicality and based on the same, the application filed by the plaintiff was erroneously dismissed. Therefore prayed that the dismissal order of the trial Court is liable to be set aside.

7. The argument of the learned counsel for the petitioner is to re-issue the warrant to the Advocate Commissioner to note down the physical feature. Considering the claim, it is clear that the re-visit of the Advocate Commissioner is just and necessary. Accordingly, the trial Court is directed to re-issue the warrant to the same Advocate Commissioner, if he is available and direct to submit his report within a period of three weeks from the date of receipt of copy of the order. Thereafter, the trial Court is directed to dispose of the said suit within a period of six months from the date of receipt of copy of this order.



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8. With the above directions, this Civil Revision Petition is allowed.

Consequently, the connected miscellaneous petition is also closed. There shall be no order as to costs.

18.10.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

nsa

Note: Issue order copy on 19.10.2022

To

1.The VIII Assistant Judge, City Civil Court,
Chennai

2.The Section Officer,
V.R.Section,
High Court, Madras.



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T.V.THAMILSELVI,J.

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