



C.R.P(PD)(MD)No.1392 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(PD)(MD)No.1392 of 2018

and

C.M.P(MD)no.5991 of 2018

1.C.Thayuman

2.K.Rajamanickam

... Petitioners /Petitioners 1 & 2 /

Defendants 1 & 2

.Vs.

1.Ambika

2.T.Sivalingam

.. Respondents 1 & 2 / Respondents / Plaintiffs

3.Natesa Pillai

.. 3rd Respondent /3rd Respondent/3rd Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 28.08.2017 passed in I.A.No.857 of 2016 in O.S.No.177 of 2009 on the file of the II Additional Sub Judge, Tiruchirappalli.



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C.R.P(PD)(MD)No.1392 of 2018

For Petitioner : Mr.M.Saravanan

For Respondents : No Appearance

ORDER

The defendants in O.S.No.177 of 2009 took out an application in I.A.No.857 of 2016 seeking to scrap the report of the Advocate Commissioner and to reissue the warrant.

2.The said application was dismissed by the trial Court in and by which, an order dated 28.08.2017, after hearing the petitioners as well as the plaintiffs, who are the respondents in the said application.

3.The petitioner herein, namely, the defendants in the suit aggrieved by the said order, has preferred the present revision, challenging the order of the trial Court on the ground that when the warrant has specifically mentioned that the Advocate Commissioner should measure the property and file a report, the trial Court grossly erred in holding that the warrant had been issued inadvertently and the order of the trial Court was only to note down the physical features.



C.R.P(PD)(MD)No.1392 of 2018

WEB COPY

4.The learned counsel for the revision petitioners would submit that even otherwise the Advocate Commissioner had acted in great haste and there was no urgency to inspect the suit property, after giving a telegram to the revision petitioners on the same morning of the proposed inspection and proceeding to inspect the property within a hour time. In short, the petitioners seems to attribute prejudice and malice as against the Advocate Commissioner for acting in such a manner.

5.Though the respondents have entered appearance through their counsel, there has been no appearance on behalf of the learned counsel for the respondents. When the matter was listed yesterday (ie., 05.12.2023) also, there was no representation and hence, the Registry was directed to post the above revision under the caption ‘for orders’ today. Today also, there is no representation for the respondents.

6.I have gone through the order impugned in the revision and I also heard the learned counsel for the revision petitioners.



C.R.P(PD)(MD)No.1392 of 2018

WEB COPY

7.He would invite my attention to the additional typed set of papers, especially to the warrant issued by the Court, dated 22.05.2008. It is clear from the warrant that the Advocate Commissioner was directed to take the assistance of a qualified surveyor and to measure the petition mentioned property with available documents and revenue records and also directed to measure the property as per the documents produced, if any, by both parties. The Advocate Commissioner was also directed to issue notice to both the parties before inspection of the petition mentioned property. The grievance of the revision petitioners is that the petitioners did not participate in the inspection conducted by the Advocate Commissioner and that on the day of the proposed inspection, the Advocate Commissioner has issued a telegram at 07.51 a.m on 23.05.2008 stating that he proposed to inspect the suit property at 08.30 a.m., and called upon the petitioners to be present at the suit property and give memo of instructions, if any. The said conduct of the Advocate Commissioner in rushing the inspection process is wholly unjustified.



C.R.P(PD)(MD)No.1392 of 2018

WEB COPY

8. When the warrant has specifically mentioned and directed the Advocate Commissioner to measure the property and also give notice to both the parties and thereafter, proceed with the inspection, the Advocate Commissioner ought not to have acted in such a great haste. The order of the trial Court also appears to be strange. The trial Court has given a finding that the warrant has been issued by inadvertence. It only goes to show that all has not been well and that the proceedings, even though on perusal of the warrant it appears that the warrant has been issued using a printed form, by merely filling the blanks, namely, the name of the Advocate Commissioner and remuneration, besides the cause title, the Courts have to be very careful and diligent in discharging their duties. Once such a warrant is issued, the Advocate Commissioner is bound by the warrant and cannot deviate from it. Even though it may have been issued by inadvertence, if at all the plaintiffs had sought only for noting down the physical features and such a warrant had been issued by inadvertence, the plaintiffs or the Advocate Commissioner ought to have brought it for the notice of the trial Court and sought for a fresh warrant being issued in consonance with the order prayed for by the petitioners in



C.R.P(PD)(MD)No.1392 of 2018

WEB COPY

their Advocate Commissioner's application. Unfortunately, this exercise has not been done and the Advocate Commissioner has proceeded to inspect the property based on the warrant issued to him, but at the same time, not complying with the direction contained in the said warrant.

9.For all these reasons, I am constrained to interfere with the order of the trial Court. The report of the Advocate Commissioner, dated 29.05.2008 stands scrapped. The trial Court shall appoint a fresh Advocate Commissioner and issue a fresh warrant of commission, with clear directions with regard to the scope of the warrant and thereafter, the said Advocate Commissioner shall inspect the suit property, after giving reasonable prior notice to both the revision petitioners as well as the respondents/plaintiffs and thereafter, inspect the property and file a report.

10.Considering that the suit has been originally filed in the year 2008, I direct the trial Court to complete the exercise of appointing a fresh Advocate Commissioner and complete the said process within a



C.R.P(PD)(MD)No.1392 of 2018

period of six weeks from the date of receipt of a copy of this order and thereafter, dispose of the suit within a period of four months.

11.The Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
SJI

06.12.2023

To

- 1.The II Additional Sub Judge, Tiruchirappalli.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(PD)(MD)No.1392 of 2018

P.B.BALAJI,J.

SJI

C.R.P(PD)(MD)No.1392 of 2018

06.12.2023