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C.R.P.(PD)Nos.2364 & 2365 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)Nos.2364 & 2365 of 2017
and C.M.P.No.11110 of 2017

In both CRPs.

1. N.Somasundaram (died)
2. R.Duraiswamy (died)

3. Palanathal
4. Angammadevi
5. Umarani
6. Venkatachalam

7. Selvi
8. Gokul Prasad
9. Parameshwaran

.. Petitioners

(1st petitioner N.Somasundaram died. Petitioners 3 to 6 are brought on record as legal heirs of the deceased 1st petitioner vide Court order dated 27.11.2024 made in C.M.P.Nos.23621, 23622 & 23624 of 2024 in C.R.P.(PD)No.2364 of 2017 & C.M.P.Nos.23706, 23709 & 23712 of 2024 in C.R.P.(PD)No.2365 of 2017 by VLNJ)

(2nd petitioner R.Duraiswamy died. Petitioners 7 to 9 are brought on record as legal heirs of the deceased 2nd petitioner vide Court order dated 27.11.2024 made in C.M.P.Nos.23912, 23913 & 23915 of 2024 in C.R.P.(PD)No.2364 of 2017 and C.M.P.Nos.23697, 23700 & 23705 of 2024 in C.R.P.(PD)No.2365 of 2017 by VLNJ)



C.R.P.(PD)Nos.2364 & 2365 of 2017

Vs

1. Thangana Gounder
2. C.Annamalai
3. P.Dhanasekar

.. Respondents

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the order dated 27.03.2017 made in I.A.Nos.403 & 405 of 2017 in O.S.No.322 of 2008 on the file of the learned District Munsif at Avinashi.

In both CRPs.

For Petitioners : Mr.T.Yogesh
for Mr. P.Tamilavel

For RR2 & 3 : Mr.S.Sriram
for Mr.K.Govi Ganesan

COMMON ORDER

These two civil revision petitions arise against the order dated 27.03.2017 made in I.A.Nos.403 & 405 of 2017 in O.S.No.322 of 2008 on the file of the learned District Munsif at Avinashi.

2. I heard Mr.T.Yogesh for Mr.P.Tamilavel for the civil revision petitioners and Mr.S.Sriram for Mr.K.Goviganesan for respondents 2 & 3. I have carefully gone through the entire records.



3. The civil revision petitions are on a very narrow compass. The plaintiffs are the civil revision petitioners. They presented O.S.No.322 of 2008 seeking the relief of declaration and recovery of possession before the learned District Munsif at Avinashi. Pending the suit, they filed an application for appointment of an Advocate Commissioner to note down the physical features of the property and to submit a report. The schedule has two items, A and B schedules. Yet again, 'A' schedule has two items and 'B' schedule has one item.

4. The learned District Munsif was pleased to appoint an Advocate Commissioner in I.A.No.1816 of 2008. She also directed the Tahsildar, Avinashi, to depute a taluk surveyor to assist the Advocate Commissioner and to file a detailed report with a plan. The Advocate Commissioner inspected the property. A report was filed before the learned District Munsif. Subsequently, the plaintiffs objected to the said report by filing a detailed objection. Thereafter, the Advocate Commissioner was examined in evidence on 19.10.2016.

5. The learned Advocate Commissioner deposed that she is not able to look into her report and depose on account of the fact that she is



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having issues with her vision. She further stated that she did not measure the property as per the order of the Court dated 23.08.2010. In addition, she deposed that she did not know, on what basis, the taluk surveyor surveyed the property and submitted the report. She added that the sketch that was given by the surveyor, whose manner of survey that she did not know about, was merely annexed to the report and the same was filed before the Court. In other words, the Advocate Commissioner by her own statement has not performed the duties as required by the warrant. She has not even supervised in what manner the Taluk surveyor had surveyed the property.

6. The very purpose for appointing an Advocate Commissioner is to enable the Court to get a report on the lie and identification of the property. When the Commissioner admits that she has not done her job and she has not supervised the taluk surveyor, who is supposed to assist her while conducting the survey, the report, obviously, does not satisfy the requirements of law. On this deposition, the learned Judge should have, *suo motu* scrapped the report and appointed a fresh Advocate Commissioner. Since the Commissioner has deposed that she is having issues with her eyesight, the learned Trial Judge could not have re-issued



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the warrant to her. As this course of action was not adopted, the plaintiffs filed applications to set aside the report and to appoint an Advocate Commissioner afresh. These applications came to be dismissed on the sole ground of delay. Hence, these revisions.

7. It is pertinent to point out, the Advocate Commissioner deposed before the Court on 19.10.2016 and within a period of four months, the applications were filed to set aside the report and to appoint a fresh Commissioner. This shows that the plaintiffs, not only objected to the report, but also, immediately on the deposition of Advocate Commissioner, filed the applications. Therefore, delay cannot be attributed to the plaintiffs.

8. The narration of the facts goes to show that the Advocate Commissioner, on account of physical limitations, has not been in a position to execute the warrant in a proper manner. The primary purpose of appointing an Advocate Commissioner is to elucidate the matter in issue in the suit. The learned Trial Judge was convinced that a report by an Advocate Commissioner will assist her in rendering a judgment in the suit. Hence, she had allowed I.A.No.1816 of 2008. It is true that the



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report had been filed by the Advocate Commissioner and the same had been objected by the civil revision petitioners.

9. When the evidence of the Commissioner was placed before the Court, the learned Trial Judge ought to have followed the judgment of this Court in *Vemba Gounder v. Pooncholai Gounder, AIR 1996 Madras 347*. In particular, the directions given by this Court in paragraph Nos.30 & 31 of the said judgment. Unfortunately, the learned Trial Judge did not follow the said procedure. If the Advocate Commissioner's report is not in consonance with the warrant issued to the said Commissioner, it necessarily has to be set aside. To dismiss the petition on the ground of delay is to perpetuate an illegality that had been committed by the Advocate Commissioner.

10. Taking over all circumstances including the deposition of the Advocate Commissioner dated 19.10.2016 into consideration, I am constrained to interfere.

11. By merely allowing the revisions, it only caused delay to the proceedings. Therefore, while allowing the revisions and while setting



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aside the order passed by the learned District Munsif at Avinashi in

I.A.Nos.403 & 405 of 2017 dated 27.03.2017,

(i) I appoint *Mr.P.Subramanian, Advocate, Mobile No.93641 12404, Enrol.No.1174/2006, No.3/148, Mercku Thottam, Ayyampalayam, Vadugapalayam Post, Avinashi - 641 654*, as a Commissioner in the said case. His fee is fixed at Rs.10,000/- (Rupees Ten Thousand Only)

(ii) The learned District Munsif at Avinashi shall issue a warrant to Mr.P.Subramanian and shall issue appropriate direction to the Tahsildar to depute a taluk surveyor.

(iii) The learned Advocate Commissioner shall strictly follow the requirements of the Code of Civil Procedure. He is requested to serve notice on all parties and thereafter, measure the property and submit a report.

(iv) In case, either parties have any objections to the report, they are entitled to file their objections within a period of two weeks from the date of filing of the report by the Advocate Commissioner.

(v) The learned Judge shall, on receipt of the report, follow the requirements as laid down by this Court in *Vemba Gounder v.*

Pooncholai Gounder, AIR 1996 Madras 347 and thereafter, shall take



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up the suit for arguments.

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No costs. Consequently, connected miscellaneous petition is closed.

27.11.2024

Index:Yes/No

(5/5)

Speaking order/Non-speaking order: Yes/No

Neutral Citation:Yes/No

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To

1. The District Munsif at Avinashi.

2.Mr.P.Subramanian, Advocate,
Mobile No.93641 12404,
Enrol.No.1174/2006,
No.3/148, Mercku Thottam,
Ayyampalayam, Vadugapalayam Post,
Avinashi - 641 654,



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V. LAKSHMINARAYANAN,J.

Kj

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