



CRP. PD.No.3547 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. PD.No.3547 of 2017
and CMP. No.16046 of 2017

Mr.Venkatachalam Chettiar

... Petitioner

Vs

1.R.Srinivasan
2.R.Anumuthu Gounder
3.Dhanam
4.A.Gajendran
5.A.Poobalan

... Respondents

Prayer: The Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket and fair orders of the learned District Munsif and Judicial Magistrate of Pochampalli, dated 27.07.2017 in I.A.No.349 of 2013 in O.S. No.29 of 2012.

For Petitioner : Mr.B.Bharathkumar
for Mr.V.Nicholas

For Respondents : No Appearance



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ORDER

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The Civil Revision Petition is preferred at the instance of the petitioner/plaintiff in a suit for declaration and permanent injunction. The plaintiff filed I.A. No.349 of 2013 and sought to examine himself at his residence citing his ill health. The said Application though opposed by the respondents/defendants, came to be allowed by the Trial Court on 24.02.2014.

2. It appears from the records that though the Advocate Commissioner has been appointed and the petition has also been filed at the stage of examination of the plaintiff and marking of documents, the defendants took out an Application for appointment of Advocate Commissioner to make a local inspection. The said Application was pending close to two years and after the report of the learned Advocate Commissioner was received, the defendants filed a memo in I.A. No.349 of 2013 seeking to recall the Commissioner's warrant on the ground that the learned Advocate Commissioner has not proceeded to record the evidence of the plaintiff. The said memo filed by the defendants was



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strongly objected to by the plaintiff on the ground that there was no change in circumstances viz., ill health of the plaintiff continued and the non examination of the plaintiff was not on account of any fault of the plaintiff, but only because of the pendency of the Application for appointment of Commissioner filed by the defendants for merely two years. However, on 27.07.2017, the Trial Court proceeded to order the memo and cancelled the warrant on the ground that the order in I.A. No.349 of 2013 dated 24.02.2014 had become infructuous.

3. I have heard learned counsel for the petitioner. Despite service of the notice, none appears for the respondents and the names of the respondents are also printed in the cause list.

4. Today, the learned counsel for the petitioner would reiterate the grounds raised in the revision petition and would submit that the Trial Court erroneously cancelled the warrant and recalled the order in I.A. No.349 of 2013. The learned counsel for the revision petitioner would also state that the Trial Court failed to consider the interim report filed by



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the learned Advocate Commissioner giving reasons for not being able to complete the warrant issued to him for examining the plaintiff. He would also refer to the medical certificate issued by the Assistant Surgeon, Government Hospital, Pochampalli dated 12.10.2016 which has been enclosed along with typed set in the revision as well. The learned counsel would therefore pray for the revision being allowed.

5. I have paid my anxious consideration to the contention advanced by the learned counsel for the petitioner.

6. The Trial Court admittedly entertained the I.A.No.349 of 2013, accepting the reasons for examining the plaintiff at his residence through an Advocate Commissioner. Subsequently, the learned Advocate Commissioner has also filed an interim report before the Trial Court and elaborated the reasons as to why he was not in a position to record the deposition of P.W.1 and however, the Trial Court based on the memo filed by the respondents/defendants proceeded to recall the order dated 24.02.2014 in I.A. No.349 of 2013. The procedure adopted by the Trial



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Court is unknown to law and procedure. An Application had been taken out by the defendants to recall the warrant already issued to the Commissioner in pursuance of an order of I.A. No.349 of 2013. The Court did not have any suo motu powers to recall the warrant especially when the very same Court had entertained the I.A and allowed the appointment of an Advocate Commissioner.

7 Further, the reasons assigned by the learned Advocate Commissioner as well as by the plaintiff for not being able to complete the examination of P.W.1 are clearly justified in the light of the Application filed by the defendants in I.A. No.83 of 2014 for appointment of Advocate Commissioner, which went on till as late as October 2016. Therefore, the Trial Court clearly erred in passing an order based on a memo and consequently, cancelling the warrant holding that the order in I.A. No.349 of 2013 had become infructuous. The said order is clearly unsustainable in the eye of law.



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P.B.BALAJI, J.

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8. In fine, the Civil Revision Petition is allowed and the order passed in the memo, dated 27.07.2017 in I.A.No.349 of 2013 in O.S. No.29 of 2012 is hereby set aside. The learned Advocate Commissioner appointed by the Trial Court shall proceed to examine P.W.1 and examination of P.W.1 shall be completed within a period of 30 days from the date of receipt of the copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

25.09.2024

Index:Yes/No

Speaking order/Non-speaking order

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To

1.The District Munsif and Judicial Magistrate, Pochampalli.

2.The Section Officer,

VR Section, Madras High Court, Chennai.

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