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B.Subhash Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1159297

Court : Kerala

Decided On : Jul-30-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : B.Subhash

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH WEDNESDAY, THE30H DAYOF JULY20148TH SRAVANA, 1936 OP(C).No. 1710 of 2014 () ---------- AGAINST THE

ORDER
IN IA NO. 1289/2014 IN OS NO. 697/2009 OF THE MUNSIFF COURT,ALAPPUZHA PETITIONER(S): ---------- B.SUBHASH, AGED44YEARS S/O. LATE P.G. BHASKARAN NAIR ADVOCATE, SUJA BHAVAN, VELIYANADU P.O. KUTTANADU TALUK, ALAPPUZHA DISTRICT689590. BY ADV. SRI.MAURICE VINCENT RESPONDENT(S): ---------- 1. STATEOF KERALA REPRESENTED BY THE CHIEF SECRETARY,GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. K.K. THAMPI, AGED61YEARS, S/O. LATE MEENAKSHI KURUVIKKATTU HOUSE (ASHA BHAVAN), VADACKAL PARAVOOR, ALAPPUZHA PIN688003.

3. K.K. ARJUNAN, AGED71YEARS, S/O. LATE MEENAKSHI KURUVIKKATTU HOUSE, VADACKAL PARAVOOR, ALAPPUZHA PIN688003.

4. K.K. MANIYAN, AGED66YEARS, S/O. LATE MEENAKSHI KURUVIKKATTU HOUSE, VADACKAL PARAVOOR, ALAPPUZHA PIN688003.

5. KAMAKSHI RAVI, AGED57YEARS, S/O. LATE MEENAKSHI THAKIDIPURAYIDOM, CHUMATHARA P.O. THIRUVALLA, PATHANAMTHITTA689 103.

6. K.K. RAJAN, AGED53YEARS, S/O. LATE MEENAKSHI KURUVIKKATTU HOUSE, VADACKAL PARAVOOR, ALAPPUZHA PIN688003. OP(C) NO. 1710/2014 7. THANKACHI, AGED51YEARS D/O. LATE MEENAKSHI, PANTHALIL HOUSE FOUNDER BAZAR, KUMARAKAM SOUTH P.O. KOTTAYAM PIN686563.

8. A. SANKARI @ RAJU, AGED ABOUT61Y EARS W/O. LATE SIVAN, DOBY STREET, DHARMASALA ROAD, H.N. 10/1131, VELI, FOR KOCHI - 1.

9. REMA MOORTHY, AGED ABOUT35YEARS D/O. LATE SIVAN, KANDATHIL HOUSE AVALOOKUNNU P.O., ALAPPUZHA PIN688006.

10. MINI ANILKUMAR, AGED ABOUT37YEARS D/O. LATE SIVAN, DOBY STREET, DHARMASALA ROAD, H.N. 10/1131, VELI, FORT KOCHI-1.

11. SINDHU SANTHOSH, AGED ABOUT35YEARS D/O. LATE SIVAN, SARAVANA, H.N. 11/941, VELI, FORT KOCHI-1.

12. P.T. CHANDRALEKHA, ADVOCATE ALAPPUZHA-1. THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON3007-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C) NO.1710/2014 APPENDIX PETITIONER(S) EXHIBITS EXHIBIT P1 : TRUE PHOTO COPY OF THE CERTIFICATE DATED2608.1992 ISSUED TO THE PETITIONER BY THE ADDITIONAL DIRECTOR OF SURVEY & LAND RECORDS, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM. EXHIBIT P2 : TRUE PHOTO COPY OF THE IA NO. 1520/2012, APPLICATION FOR APPOINTING ADVOCATE

COMMISSIONER DATED1106.2012 FILED BY THE2D RESPONDENT IN IA NO. 2086/2011 IN OS NO. 697/2009 BEFORE THE HONOURABLE MUNSIFF COURT,ALAPPUZHA. EXHIBIT P3 : TRUE PHOTOCOPY OF THE

ORDER
OF APPOINTMENT OF PETITIONER AS ADVOCATE COMMISSIONER BY THE HONOURABLE MUNSIFF COURT, ALAPPUZHA DATED2711.2012. EXHIBIT P4 : TRUE PHOTO COPY OF THE SETTLEMENT DEED HAVING NO. 419/2000 OF ALAPPUZHA SRO. EXHIBIT P5 : TRUE PHOTOCOPY OF THE RELEASE DEED HAVING NO. 6515/2010 OF ALAPPUZHA SRO. EXHIBIT P6 : TRUE PHOTOCOPY OF THE DECREE DATED2602.2011 IN OS NO. 697/2009 OF THE HONOURABLE MUNSIFF COURT,ALAPPUZHA. EXHIBIT P7 : TRUE PHOTOCOPY OF THE MAHAZAR DATED2012.2012 PREPARED BY THE PETITIONER EXHIBIT P8 : TRUE PHOTOCOPY OF THE INTERIM REPORT DATED3112.2012 SUBMITTED BY THE PETITIONER EXHIBIT P9 : TRUE PHOTOCOPY OF THE IA NO. 1289/2014 DATED2603.2014, APPLICATION FOR REMOVING PETITIONER FROM THE POST OF ADVOCATE COMMISSIONER AND TO APPOINT NEW COMMISSIONER FILED BY THE2D RESPONDENT BEFORE THE HONOURABLE MUNSIFF COURT, ALAPPUZHA. EXHIBIT P10 : TRUE PHOTOCOPY OF

ORDER
OF APPOINTMENT OF12H RESPONDENT AS2D ADVOCATE COMMISSIONER BY THE HONOURABLE MUNSIFF COURT, ALAPPUZHA. EXHIBIT P11 : TRUE PHOTOCOPY OF THE NOTICE DATED0406.2014 ISSUED BY THE12H RESPONDENT EXHIBIT P12 : TRUE PHOTOCOPY OF MAHAZAR DATED1006.2014 PREPARED BY THE12H RESPONDENT EXHIBIT P13 : TRUE PHOTOCOPY OF THE FINAL REPORT DATED2706.2014 SUBMITTED BY THE12H RESPONDENT EXHIBIT P14 : TRUE PHOTOCOPY OF THE SURVEY PLAN DATED1006.2014 PREPARED BY THE SURVEYOR AND PRODUCED BY THE12H RESPONDENT. RESPONDENT(S) EXHIBITS : NIL /TRUE COPY/ P.A. TO JUDGE. "C.R." V. CHITAMBARESH, J ---------- OP(C) NO. 1710 OF2014----------
Dated this the 30th day of July, 2014

JUDGMENT

Can the Advocate Commissioner challenge the order setting aside his report filed in a suit and appointing another to execute the warrant of appointment? 2. The petitioner is the Advocate Commissioner appointed in the final decree proceedings for partition in O.S. No. 697 of 2009 on the file of the court of the Munsiff of Alappuzha. The Advocate Commissioner filed an interim report in the proceedings to the effect that the plaint schedule property could not be identified with reference to the documents of title relied on by the parties. The plaintiff thereupon filed an application to appoint another Advocate Commissioner to execute the warrant of appointment on the premise that the interim report deserved to be set aside. The court below allowed the application and appointed another Advocate Commissioner who has since filed a detailed report and survey plan after 2 OP(C) No. 1710/2014 conducting local inspection with notice. The grievance of the petitioner is that he was not heard before another Advocate Commissioner was appointed to complete the task thereby brushing aside his interim report. The petitioner contends that he should have been afforded an opportunity to explain his stand and that the order appointing another Advocate Commissioner is uncalled for and liable to be set aside.

3. An Advocate Commissioner can be appointed under Order XXVI of the Code of Civil Procedure, 1908 ('the CPC' for short) generally for the following purposes: (i) To examine witnesses. (ii) For local investigation. (iii) For scientific investigation, performance of ministerial act and sale of movable property. (iv) To examine accounts and (v) To make partition. The Advocate Commissioner is expected to adopt an impartial 3 OP(C) No. 1710/2014 stand and shall behave in such an exemplary manner that he gives no room for any allegation of bias from any one of the litigating parties. The report of the Advocate Commissioner shall be evidence in the suit in which it is filed (without him being even examined) and shall form part of the record under Order XXVI Rule 10(2) of the CPC. The court if dissatisfied with the proceedings of the Advocate Commissioner for any reason can direct such further enquiry to be made as it thinks fit under Order XXVI Rule 10(3) of the CPC. The court is also empowered to set aside the report and issue commission afresh by deputing another Advocate to discharge the function under Order XXVI

Rule 14(3) of the CPC.

4. The duty of the Advocate Commissioner is only to record evidence and give a vivid report of the true state of affairs in order to aid the court to have a proper assessment of the factual matrix. The Advocate Commissioner is undoubtedly entitled to his remuneration for the work hitherto done whether or not his report is accepted, modified or set aside by the court eventually in the proceedings. The Advocate Commissioner is 4 OP(C) No. 1710/2014 thus an officer of the court who has no interest what so ever in the subject matter of the litigation or in the person who would ultimately win the cause. The Advocate Commissioner should not be prestige conscious about his report and must remain unruffled even if his report filed after laborious work is set aside by the court for trivial reasons. It is for the parties to the lis to pursue the case and it is for the court to decide about the acceptability or otherwise of the report of the Advocate Commissioner in the proceedings. The parties may or may not examine the author of the report while testing its acceptability and the Advocate Commissioner cannot insist on himself being examined. The Advocate Commissioner has no right to be heard before his report is set aside and is not also a person aggrieved by the order appointing another to execute the warrant of appointment. The Original Petition is rejected in limine. V. CHITAMBARESH JUDGE ncd

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