

Jayapal and Others Vs. Jayaraman

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Court : Chennai

Decided On : Nov-16-2016

Judge : M. Duraiswamy

Appeal No. : C.R.P.(NPD). No. 138 of 2014 & M.P. No. 1 of 2014

Appellant : Jayapal and Others

Respondent : Jayaraman

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.39 of 2013 in A.S.No.26 of 2012 dated 08.11.2013 on the file of the Sub Court, Tirupattur, Vellore District.)

1. Challenging the fair and final order passed in I.A.No.39 of 2013 in A.S.No.26 of 2012 on the file of the Subordinate Court, Tirupattur, the appellants, who are the defendants in O.S.No.129 of 2006 on the file of the District Munsif Court, Tirupattur, have filed the above Civil Revision Petition.

2. The respondent/plaintiff filed the suit in O.S.No.129 of 2006 for declaration and permanent injunction.

3. Before the trial Court, an Advocate Commissioner was appointed and the Advocate Commissioner also inspected the property and filed his report. However, the petitioners did not file any objections to the Commissioner's report.

4. After taking into consideration the oral and documentary evidences let in by the parties, the trial Court decreed the suit. Aggrieved over the judgment and decree passed by the trial Court, the defendants preferred an appeal in A.S.No.26 of 2012. In the appeal, the revision petitioners took out an application in I.A.No.39 of 2013 for re-issuance of warrant of commission. In the affidavit filed in support of the petition, the defendants have stated that the Advocate Commissioner has not identified Survey No.476/9 and without seeing the village records with the help of the Village Administrative Officer and without measuring the Car track with the help of the Surveyor, had filed an incorrect report.

5. The averments stated in the affidavit filed in support of the petition were raised for the first time by the revision petitioners before the Lower Appellate Court. If the petitioners are really aggrieved over the report filed by the Advocate Commissioner, they should have filed the objections to the Commissioner's report.

6. The learned counsel appearing for the petitioners submitted that the Advocate Commissioner has filed the report in the year 2006 before the trial Court.

7. When the revision petitioners had sufficient time for filing their objections before the trial Court, they chose not to file any objections to the Commissioner's report. Therefore, the trial Court, based on the available materials, decreed the suit. The petitioners cannot raise the objections in piece meal manner, that too, after the decree being passed in the suit. The Lower Appellate Court, taking note of all these aspects, rightly dismissed the application.

8. In these circumstances, I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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