

Kanagam and Another Vs. Gowdhaman

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Court : Chennai Madurai

Decided On : Nov-01-2016

Judge : D. Krishnakumar

Appeal No. : C.R.P(PD)(MD)No. 2178 of 2016 & C.M.P(MD)No. 10134 of 2016

Appellant : Kanagam and Another

Respondent : Gowdhaman

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to set aside the fair and decretal order passed in I.A.No.236 of 2016 in O.S.No.92 of 2014, dated 2.7.2014, on the file of the I Additional District Munsif Court, Kuzhithurai.)

1. This revision has been filed seeking for a direction to set aside the fair and decretal order passed in I.A.No.236 of 2016 in O.S.No.92 of 2014, dated 2.7.2014, on the file of the I Additional District Munsif Court, Kuzhithurai.

2. According to the Petitioners, the suit 'A' schedule property was allotted to Govinda Panicker. The above suit 'A' schedule property form part of the property acquired for channel. Hence the Petitioners disputed the identity of the suit property. Therefore an application has been filed by the revision petitioners seeking appointment of an Advocate Commissioner. The said application was dismissed by the trial Court. Hence the revision Petitioners have come forward

with the present revision for the relief stated supra.

3. Heard the learned counsel for the petitioners and perused the materials available on record.

4. It is an admitted fact that the above said suit was filed by the respondent herein/plaintiff in O.S.No.92 of 2014 for permanent injunction. According to the Petitioners, the Plaintiff/respondent has no right in the suit 'A' schedule property as it belongs to the Public Works Department and the same is classified as Channel Poramboke. Therefore the identity of the suit property is disputed by the Petitioners/defendants. The Plaintiff/respondent has not taken any steps to identify the suit 'A' schedule property by appointing an Advocate Commissioner.

5. According to the revision petitioners, the respondent herein/Plaintiff has filed the said application to identify the suit 'A' schedule property. According to the Petitioners, the dispute is regard to suit 'A' schedule property, it is a channel poramboke. Therefore, the Petitioners can very well establish the same before the trial Court on the basis of oral and documentary evidence to prove that the suit 'A' schedule property is a channel poramboke. The suit has been filed by the respondent/plaintiff and if the respondent/plaintiff has not chosen to take any steps to prove the identity of the suit 'A' schedule property, then adverse inference will be drawn against the respondent/plaintiff. The said observation was also made by the trial Court in the I.A. Order.

6. According to the respondent/Plaintiff, plaintiff's side evidence was concluded and the suit was posted for cross examination of P.W.1. At this stage, the present application has been filed by the revision petitioners herein, to appoint an Advocate Commissioner.

7. In view of the above reasonings, this Court comes to a conclusion that the trial Court has rightly dismissed the above said application filed by the revision petitioners for appointment of an Advocate Commissioner and hence this Court does not want to interfere with the said order passed by the trial Court. Thus the revision fails.

8. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

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