



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .No.266 of 2015

and

M.P. (MD) .Nos.2 & 3 of 2015

S.S.Yamuna

... Revision Petitioner/Plaintiff

vs.

M.R.Radha Mohan

... Respondent/1st Defendant

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for records and set aside the fair and executable order dated 16.12.2012 passed in I.A.No.624 of 2014 in O.S.No.155 of 2013 on the file of the Sixth Additional District Court, Madurai and pass such other further orders as may be deemed fit and proper in the circumstances of the case.

For Petitioner : Mr.J.Barathan

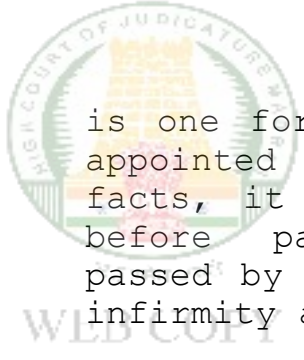
For Respondent : Mr.M.D.Poornaachari

O R D E R

The plaintiff, who is the revision petitioner herein filed this revision challenging the appointment of Commissioner in I.A.No.624 of 2014 to make local investigation of the petition mentioned property with the help of Government Surveyor and to file a report.

2.Despite the resistance from the plaintiff, the order of appointment was passed on 16.12.2014. The revision challenging the same was filed on 22.01.2015 and stay of operation of the said order was granted by this Court on 16.02.2015.

3.In the mean while, it is submitted by the learned counsel for the respondent that the commissioner had made his visit and file a report on 07.02.2015. The trial Court had appointed the Commissioner on the averments made in the affidavit filed in support of I.A contending that there was a land acquisition proceedings including the suit property for which the defendant had no knowledge and wanted to know the extent of land acquired from the suit property. However, in the affidavit filed in support of the vacate stay petition, it is contended by the defendant that there was a sign board that was erected by the Madurai Corporation on the road side, warning the owners of the lands not to put to
<https://www.e-courts.gov.in/> 100 feet from the road. It is not the case of the respondent that even if the suit property is included and the process is commenced, it can not be challenged. Besides, the suit



is one for partition and necessarily the commissioner has to be appointed in the final decree proceedings. In the given set of facts, it is not necessary for appointment of commissioner even before passing of the preliminary decree. Therefore, the order passed by the VI Additional District Judge, Madurai suffers from infirmity and it is liable to be set aside.

4. Accordingly, the order passed by the learned Sixth Additional District Judge, Madurai in I.A.No.624 of 2014 in O.S.No.155 of 2013, is set aside and the civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Per.Admn)

/True Copy/

Sub-Assistant Registrar

To
The Sixth Additional District Court,
Madurai.

+One cc to Mr.T.R.Jeyapalam, Advocate , SR.No.12607
+One cc to Mr.M.D.Poornaachari, Advocate, SR.No.12655
Ns
RL/ 4c - 31/3/2015

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