



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

C.R.P. (NPD) (MD) No.1204 of 2011

and

M.P. (MD) No.1 of 2011

Karuppusamy @ Kathiravan ... Petitioner/Defendant/petitioner

-vs-

M.Muthusamy ... Respondent/plaintiff/Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India , against the order and decretal order dated 01.04.2011 made in I.A.No.215 of 2011 in O.S.No.3 of 2009 on the file of the District Munsif Court, Paramakudi.

For Petitioner : Mr.S.Siva Thilakar

For Respondents : Mr.K.Govindarajan

ORDER

The respondent filed a suit for declaration and recovery of possession before the District Munsif Court, Paramakudi in I.A.No.215 of 2011. The suit was contested by the petitioner.

2. The trial Court appointed an Advocate Commissioner, at the instance of the respondent. The learned Advocate Commissioner after inspection filed his report. The petitioner filed detailed objection to the report.

3. Thereafter and more specifically, after commencing trial, the petitioner filed an application in I.A.No.215 of 2011 for appointment of another Advocate Commissioner. The application was dismissed by the learned Trial Judge. The order dated 01 April 2011 is under challenge in the present Civil Revision Petition.

4. The learned counsel for the petitioner contended that the Advocate Commissioner appointed earlier failed to inspect the property with the help of surveyor. According to the learned counsel, correct measurement of the property has not been reported by the Advocate Commissioner. The learned counsel further contended that the suit being one for recovery of possession, it is the duty of the Commissioner to identify the property.

5. The learned counsel appearing on behalf of the respondent justified the impugned order. According to the learned counsel, the petitioner was given sufficient opportunity by the Advocate Commissioner to represent his case before filing report.



6. The trial Court earlier appointed an Advocate Commissioner. The Advocate Commissioner submitted his report and plan. The petitioner wanted another Advocate Commissioner to be appointed to inspect the property once again. The petitioner has not made a request to scrap the earlier report. In these circumstances, the question of appointment of another Advocate Commissioner does not arise.

7. The petitioner is given opportunity to file an application before the Trial Court to remit the report to the very same Advocate Commissioner for inspection along with surveyor, after recording evidence. In case, any such application is filed after trial, it would be decided by the learned Trial Judge on merits and as per law. In short, the question of appointment of Advocate Commissioner would be decided by the learned Trial Judge, in case, he is of the view that such appointment would facilitate the Court to decide the issue in a more effective manner.

8. The civil revision petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

vs

To:

The District Munsif Court, Paramakudi

+one cc to Mr.S.Sivathilakar, Advocate in SR.NO.40719

+one cc to M/s.K.Govindarajan, Advocate in SR.No.40725.

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