

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1404 of 2016

&

C.M.P.No.7812 of 2016

L.Babu

... Petitioner

VS

1.Shyla Jayaram

2. The Udhagamandalam Municipality
a Statutory body constituted under
the Tamilnadu District Municipalities Act
Rep.by its Commissioner Ooty

3.The State of Tamilnadu
Rep by the Collector of Nilgiris
Ootacamund

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India
praying to set aside the order passed in I.A.No.1229/2015 in O.S.No.76 of 2002
dated 23.03.2016 on the file of learned District Munsiff, Udhagamandalam.

For Petitioner : Mr.S.Elambharathi

ORDER

This revision arises against the order of learned District Munsiff, Udhagamandalam, passed in I.A.No.1229/2015 in O.S.No.76 of 2002 dated 23.03.2016.

2. Heard the learned counsel for petitioner.

3. First respondent/plaintiff has filed a suit alleging violation of the building plan in construction put up by the petitioner/first defendant. He has also impleaded the Udhagamandalam Municipality as the second defendant. Petitioner had moved I.A.No.1009 of 2006, raising the question of maintainability of the suit and requiring that the same to be tried as a preliminary issue. Such application was allowed under order of this Court in CRP.(PD)No.1346 of 2004, an Advocate Commissioner was appointed, who according to the petitioner has submitted a report that the petitioner has not indulged in any violation. The petitioner moved I.A.No.1229 of 2015 towards examination of such Advocate Commissioner before the examination of other witnesses contending that the Commissioner's Report absolves him of wrong doing and the consequence would be that the plaintiff's suit is bad and plaintiff out to be non suited. Such a plea rightly has been negated by the Court below as permitting the same would amount to denying the respondent/plaintiff an opportunity to prove her case. As is well known an Advocate Commissioner

report never can be the be-all and end-all in deciding the merits of a particular case. The order under challenge calls for no interference. We affirm the findings of the Court below on Or.14.R.2(ii) C.P.C Civil Revision Petition is dismissed. No costs. Connected miscellaneous petition is closed.

27.06.2016

Index:yes/no

Internet:yes

To

The District Munsiff, Udhagamandalam.

C.T.SELVAM, J

kpr

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