

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2016
Coram

The Hon'ble Mr.Justice M.DURAI SWAMY

CRP(PD)NO.2175 of 2016
and C.M.P.No.11281 of 2016

Kunjammal		...Petitioner
	Vs	
Periyasamy		... Respondent

Civil Revision Petition filed under Section 227 of the Constitution of India against the fair and decreetal order dated 12.01.2016 passed in I.A.No.810 of 2015 in O.S.No.190 of 2015 on the file of the District Munsif Court, Mettur Dam, Salem District.

For Petitioner : Mr.C.Prabakaran

O R D E R

Challenging the fair and decreetal order dated 12.01.2016 passed in I.A.No.810 of 2015 in O.S.No.190 of 2015 on the file of the District Munsif Court, Mettur Dam, Salem District, the 1st defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.190 of 2015 to declare the title in respect of his father's 7/8th share in the suit property for permanent injunction and for other reliefs.

3. The defendants filed their written statement and are contesting the suit. In the said suit, the plaintiff took out an application in I.A.No.810 of 2015 seeking for appointment of an Advocate Commissioner to find out the physical features. The 1st defendant filed his counter and opposed the application seeking for appointment of an Advocate Commissioner. The Trial Court, taking into consideration the case of both the parties, allowed the application and appointed an Advocate Commissioner to note down the physical features, with the help of the Village Administrative Officer and the Surveyor. Challenging this order, the 1st defendant has filed the above Civil Revision Petition.

4. Mr.C.Prabakaran, learned counsel appearing for the petitioner submitted that the Commissioner had already visited the property on 02.07.2016. However, the Commissioner has not filed his report yet before the Trial Court. The learned counsel for the petitioner further submitted that the Commissioner had inspected the property in the absence of the 1st defendant and therefore, the 1st defendant is put to prejudice and hardship. Hence, the learned counsel submitted that the petitioner may be given liberty to file an application seeking for re-issuance of warrant of Commission and the Commissioner may be directed to inspect the property once again in the presence of the 1st defendant.

5. In view of the submission made by the learned counsel for the petitioner, I am of the view that the Advocate Commissioner can be directed to inspect the property in the presence of all the parties and file his report before the Trial Court.

6. Accordingly, I direct the District Munsif, Mettur Dam, Salem District to direct the Advocate Commissioner, who was appointed earlier in I.A.No.810 of 2015 to inspect the suit property with the help of the Village Administrative Officer and the Surveyor and to measure the same in the presence of all the parties and to file his report. The parties are at liberty to file their objections to the Commissioner's report, if they are aggrieved over the same.

With these observations, the Civil Revision Petition is disposed of. No costs. Connected miscellaneous petition is closed.

28.07.2016

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Note: Issue next week

To

I Additional Subordinate Judge, Salem.

M.DURAI SWAMY,J

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