



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(MD) (PD)No.1264 of 2016

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Pandeeswari

: Petitioner

Vs.

1.Shanmugaraj
2.Kalidass
3.Subbiah
4.Murugan
5.The Tahsildar,
Virudhunagar Taluk,
Bye Pass Road,
Madurai Road,
Virudhunagar

: Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 12.04.2016 passed in I.A.No.576 of 2015 in I.A.No.642 of 2010 in O.S.No.118 of 2009 on the file of the District Munsif of Virudhunagar.

For Petitioners : Mr.S.Subbiah
For Respondents : Mr.P.Santhosh Kumar
for RR1 to 4

ORDER

The civil revision petition arises against the order dated 12.04.2016 passed in I.A.No.576 of 2015 in I.A.No.642 of 2010 in O.S.No.118 of 2009 on the file of the District Munsif of Virudhunagar.

2.According to the petitioner, the petitioner filed the suit in O.S.No.118 of 2009 for declaration and permanent injunction and also for mandatory injunction against the respondents herein. According to the petitioner, the petitioner earlier filed I.A.No.642 of 2010 for the appointment of advocate commissioner in the above said suit. The Advocate Commissioner, who was appointed in I.A.No.642 of 2010, has returned the warrant and filed a report on 10.07.2015, stating that without the help of the surveyor, the property cannot be inspected. Hence, the present petition has been filed to re-issue the commission warrant to the advocate commissioner to inspect the suit property. However, without
<https://hcservices.cemilnchcservices/> facts of the case, the trial Court dismissed the said application. Aggrieved against the said order, the present civil revision petition has been filed.



3. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 4 and perused the materials available on record.

4. According to the petitioner, already the Court below has appointed an advocate commissioner in I.A.No.642 of 2010. However, because of the inability to identify the suit property without the help of the surveyor, he returned the commission warrant and filed a report stating that without the help of surveyor, the property cannot be measured and submit a report. The present application has been filed to reissue the warrant. The revision petitioner has further submitted that even though the present application is filed reissue commission warrant, in view of the earlier report submitted by the commissioner that without the help of the surveyor, the said inspection cannot be possible. Therefore, the petitioner seeks permission to mould the relief and to reissue the commission warrant to inspect the suit property along with the surveyor.

5. The counsel for the respondent has submitted that the relief sought for by the petitioner in the present application cannot be granted. However, this Court can be considered if any advocate commissioner can be appointed to inspect the property along with the District surveyor. The respondent cannot have any serious objection for allowing the said application.

6. In the light of the submissions made on either side, I am inclined to pass the following order:

(i) The order dated 12.04.2016 passed in I.A.No.576 of 2015 in I.A.No.642 of 2010 in O.S.No.118 of 2009 on the file of the District Munsif, Virudhunagar, is hereby set aside;

(ii) The matter is remitted back to the Court below to pass appropriate orders by reissue the commission warrant to the advocate commissioner to inspect the suit property along with the help of District surveyor and also to file a report.

(iii) The Court below shall fix a period to submit the report in the aforesaid suit.

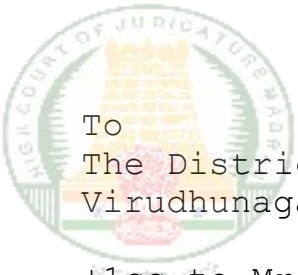
7. The civil revision petition is allowed to the above extent. No costs.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar



To
The District Munsif,
Virudhunagar.

+1cc to Mr.S.Subbiah, Advocate Sr.No.72901

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order made in
C.R.P. (MD) (PD) No.1264 of 2016

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24.11.2016