



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.247 of 2016 (PD)
and
C.M.P.(MD)No.1031 of 2016

Vasanthi

.. Petitioner

Vs.

Andi

.. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the fair order and decreetal order passed in I.A.No.460 of 2014 in O.S.No.867 of 2012, dated 02.11.2015 on the file of Principal District Munsif, Madurai Town and to dismiss the above said I.A.No.460 of 2014 in O.S.No.867 of 2012 by allowing this Civil Revision Petition.

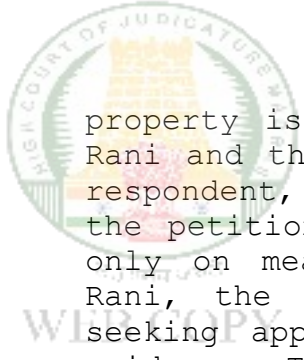
For Petitioner : Mr.S.Mahesh Babu

ORDER

The petitioner is the defendant whereas the respondent is the plaintiff in O.S.No.867 of 2012.

2.The respondent filed a suit for declaration and injunction. Pending the suit, the respondent filed I.A.No.460 of 2014 for appointment of Advocate Commissioner to note down the physical features of the petition mentioned property and to measure the properties of both parties as per their sale deeds dated 02.06.2000 and 23.06.1999 and as per actual measurement exist on ground and to file a report and sketch. The petitioner filed counter affidavit and opposed the same on the ground that the respondent purchased the property without any layout plan. The property mentioned by the respondent belonged to one Usha Rani is Kanmai Poramboke. The respondent is not seeking for help of surveyor, therefore prayed for dismissal of the said application. The learned Principal District Munsif, Madurai Town considering the facts and circumstances of the case appointed an Advocate Commissioner to note down the physical features and to measure the properties of both petitioner and respondent as per their sale deeds with the help of the surveyor. Against the said order, the petitioner has filed the present Civil Revision Petition.

3.The learned counsel appearing for the petitioner submitted that the learned Judge failed to consider the fact that the respondent struck off the prayer for measuring the property of Usha Rani and failed to appreciate contention of the petitioner that suit



property is common pathway for the petitioner, respondent and Usha Rani and the respondent has not impleaded the Usha Rani as a party respondent, who is necessary party. If by measuring the property of the petitioner and respondent the real issue cannot be decided and only on measuring the property of the adjacent owner I.e., Usha Rani, the issue in the suit can be decided. The respondent by seeking appointment of Advocate Commissioner is trying to gather evidence. The respondent has no documentary evidence to prove his case.

4. Heard Mr.S.Mahesh Babu, learned counsel appearing for the petitioner.

5. I have carefully perused the entire materials on record and arguments of counsel for the petitioner.

6. The learned Principal District Munsif, Madurai Town considered all the materials on record and considering the nature of relief sought for in the suit has held that the appointment of Advocate Commissioner is necessary to decide the main issue in proper perspective. The learned Judge has exercised the power conferred on him properly and has given valid reasons for appointment of Advocate Commissioner. There is no irregularity in the said order warranting interference by this Court.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Madurai Town.

+1CC to S.Mahesh Babu, Advocate in Sr.No.7004

CN/GSV-AN/16.2.2016/3C-2P

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