



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.2522 of 2016 (PD)

&

C.M.P.(MD) No.11904 of 2016

A.Shanmugham

..Petitioner/Petitioner/
Petitioner/Plaintiff

Vs.

- 1.M.Duraipandian
- 2.K.Mani
- 3.R.Natarajan
- 4.V.Ponnusamy
- 5.K.Thangavelu
- 6.P.Sivakumar
- 7.P.Chandran
- 8.V.Chandrasekar
- 9.G.Senthivel
- 10.G.Srinivasan
- 11.M.Paramasivam
- 12.D.Kanakaraj
- 13.G.Ravi

..Respondents/Respondents/
Respondents/Defenatns

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and executable order, dated 20.09.2016, made in I.A.No.197 of 2016 in I.A.No.189 of 2015 in O.S.No.953 of 2013, on the file of the Principal District Munsif Court, Dindigul.

For Petitioner : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition has been filed against the fair and executable order, dated 20.09.2016, made in I.A.No.197 of 2016 in I.A.No.189 of 2015 in O.S.No.953 of 2013, on the file of the Principal District Munsif Court, Dindigul.

2. Facts of the case:

(i) The petitioner is the plaintiff and the respondents are the defendants in the suit in O.S.No.953 of 2013 on the file of the Principal District Munsif Court, Dindigul. The petitioner filed the suit for permanent injunction. Pending suit, he filed I.A.No.189 of 2015 for appointment of Advocate Commissioner. The said Application was ordered and Advocate Commissioner was appointed. The Advocate Commissioner inspected the suit property and filed his report along with sketch. Thereafter, the petitioner has also filed I.A.No.197 of 2016 for re-issuance of warrant to the same Advocate



Commissioner on the ground that the Advocate Commissioner refused to take note of the Odai situated at the eastern and western side of the suit property in spite of the Memo of instructions given by the petitioner. Further, the Advocate Commissioner has wrongly mentioned the measurement of the suit property in his report.

(ii) The respondents filed written statement and resisted the said application. The respondents denied all the averments made in the affidavit and submitted that the Advocate Commissioner inspected the suit property and filed his report as per the warrant of commission. The petitioner filed his objection to the Advocate Commissioner's report. Further, the petitioner has examined the Village Administrative Officer as P.W.3 with regard to existence and nature of Cart Track. The petitioner has to prove his case only by oral and documentary evidence to be let in by him and not by the report of the Advocate Commissioner. The respondent further submitted that the suit property in S.No.227/7 was used as Cart Track for more than 120 years by the respondents and by the Village people and adjacent to S.No.227/7, there is agricultural lands in S.Nos.225 and 226 and the respondents are using the suit property in S.No.227/7 as a Cart Track.

(iii) The learned Principal District Munsif, Dindigul, considering the averments mentioned in the affidavit and the counter affidavit and also considering the materials available on record, dismissed the application holding that the petitioner has to prove his case only by letting in evidence and also took note of the contention of the respondents that the petitioner has examined the Village Administrative Officer with regard to nature of the property.

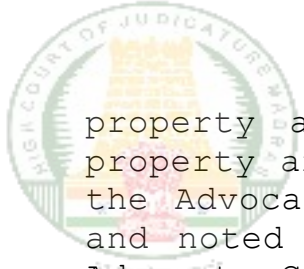
3. Against the said order dismissal dated 20.09.2016, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel for the petitioner submitted that the learned Principal District Munsif failed to see that the Advocate Commissioner did not inspect the Odai on the eastern and western side of the suit property in spite of the Memo of instruction given by the counsel for the petitioner and the Advocate Commissioner has wrongly mentioned the measurement in his report. He further submitted that the learned Principal District Munsif is not correct in dismissing the application on the ground that the petitioner has to prove his case by letting in oral and documentary evidence. Therefore, it is his contention that in view of the mistake committed by the Advocate Commissioner in the report and not inspecting the Odai, the Advocate Commissioner has to be re-appointed for inspection of the property and the said application has to be allowed.

5. Heard the learned counsel for the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>

6. On the application filed by the petitioner in I.A.No.189 of 2015, an Advocate Commissioner was appointed to inspect the suit



property and the Advocate Commissioner also inspected the suit property and filed his report. As per the Warrant of Commission, the Advocate Commissioner has inspected and measured the property and noted down its physical features and filed his report. The Advocate Commissioner did not inspect the Odai on the eastern and western side of the suit property as alleged by the petitioner, as there is no such direction in the warrant. The petitioner has filed his objection to the report filed by the Advocate Commissioner. Already the trial has commenced. The petitioner has examined the Village Administrative Officer as P.W.3, who has also deposed with regard to nature of the suit property. In the circumstances, the petition for re-issuance of warrant to the Advocate Commissioner is devoid of merits. The learned Principal District Munsif, upon considering all the materials on record, has dismissed the application giving cogent and valid reasons.

7. The petitioner has filed the suit for permanent injunction and it is for the petitioner to prove his case, by letting in oral and documentary evidence, but not based on the Advocate Commissioner's report. It is well settled that Advocate Commissioner cannot be appointed to collect evidence for the parties to the suit. Therefore, the learned Principal District Munsif has considered the materials in proper perspective and there is no illegality or irregularity in the said order warranting interference by this Court.

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

Sd/-

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar(CS)

To
The Principal District Munsif,
Dindigul.

Copy to : The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.A.AnandChandrasekar, Advocate in SR.80753

C.R.P. (MD) No.2522 of 2016 (PD)
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