



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2016

CORAM :

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) No.924 of 2016
and C.M.P.(MD) No.4636 of 2016

Santhanamuthu ... Petitioner/Petitioner/1st Defendant

Vs.

1.Frederick Mark ... 1st Respondent/1st Respondent/Plaintiff
2.Muthulakshmi ... 2nd Respondent/2nd Respondent/2nd Defendant

PRAYER: Civil Revisions are Petition filed under Section 227 of Constitution of India to set aside the Fair and decretal order dated 17.02.2016 passed in I.A.No.510 of 2015 in O.S.No.111 of 2014 on the file of the file of Additional District Munsif Court, Tuticorin.

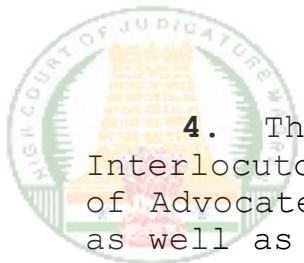
For Petitioner : Mr.M.P.Senthil
For 1st Respondent : Mr.S.Kadarkarai

O R D E R

The revision is directed against the fair and decretal order dated 17.02.2016 passed by the Additional District Munsif Court, Tuticorin. I.A.No.510 of 2015 in O.S.No.111 of 2014.

2. The petitioner is the first defendant in O.S.No.111 of 2014. The first respondent, as plaintiff, filed the said suit against the petitioner and the second respondent for declaration, permanent injunction and for mandatory injunction.

3. The first respondent/plaintiff also filed an application in I.A.No.607 of 2014 seeking for appointment of an Advocate Commissioner to note down the physical features of the suit property. The Trial Court allowed the application and appointed one Mr.Ramanathan as Advocate Commissioner to note down the plaintiff's property. Although the Advocate Commissioner filed his report on 09.06.2014, eventually, the application was dismissed on 23.07.2014 observing that the remuneration for the Advocate Commissioner was not paid.



4. Thereupon, the petitioner/the first defendant filed an Interlocutory Application in I.A.No.510 of 2015 seeking appointment of Advocate Commissioner to note down the property of the plaintiff as well as the defendants and to measure the same with the help of a surveyor. The learned Additional District Munsif Court, Tuticorin, dismissed the application. Aggrieved over the same, the present revision is filed.

5. Heard Mr.M.P.Senthil, learned counsel appearing for the petitioner and Mr.Kadarkarai, learned counsel appearing for the first respondent and perused the materials available on record.

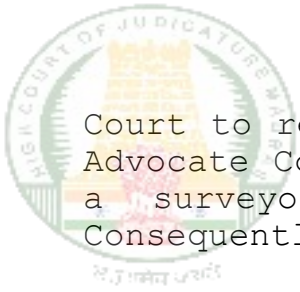
6. Mr.M.P.Senthil, learned counsel for the petitioner would submit that the trial court, having felt that the report of the Advocate Commissioner would help to decide the issue in the case, appointed the Advocate Commissioner. However, ultimately the said application was dismissed and the present petition was dismissed on the ground that without scrapping the report of the earlier Commissioner, second Advocate Commissioner cannot be appointed and this application was filed belatedly.

7. The contention of the learned counsel for the petitioner that when the application filed by the plaintiff itself was dismissed for default, there is no necessity for the petitioner to seek scrapping of the earlier report. It is further contended that even earlier Commissioner's report was not filed taking aid of a surveyor, which is necessary in this case.

8. Per contra, Mr.Kadarkarai, learned counsel for the first respondent/plaintiff would submit that while filing the report, the earlier Advocate Commissioner has specifically stated that he has received remuneration. Further, the learned counsel would point out that while filing I.A.No. 510 of 2015, the petitioner/the first defendant has suppressed the facts that Advocate Commissioner was appointed earlier and after filing of his report, the earlier application was dismissed and therefore, the petitioner is not entitled for indulgence of this Court.

9. At this juncture, the learned counsel for the petitioner would submit that instead of appointing a new Advocate Commissioner, this Court can issue a direction to the Trial Court for re-issuance of warrant to the same Commissioner, who in turn, shall measure the property of the petitioner as well as the respondents with the help of a surveyor, which would meet the ends of justice.

10. Considering the submission of the learned counsel for the petitioner, this revision is disposed of directing the Trial



Court to re-issue warrant to the same Advocate Commissioner and the Advocate Commissioner shall measure the properties with the help of a surveyor and file a report at the earliest. No costs. Consequently, connected C.M.P.(MD) No. 4636 of 2016 is closed.

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Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif,
Tuticorin.

+ 1 CC TO MR.M.P.SENTHIL, ADVOCATE IN SR No. 39394
+ 1 CC TO MR.S.KADARKARAI, ADVOCATE IN SR No. 39347

CM
TE/SS-2 : 19/09/2016 : 3P/4C

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