

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 15.11.2016****CORAM:****THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR****C.R.P. (PD) (MD) No.1113 of 2016**

Paraman ... Petitioner/2nd defendant
Vs.

1.Gunasekaran
2.Jeyaprabha
3.Sandhar ... Respondents/Plaintiffs
4.Karuppadevar ... Respondents/1st Defendant

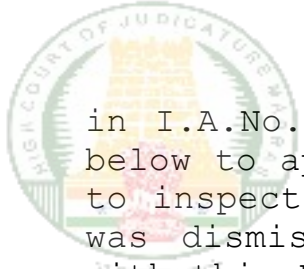
PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 06.12.2010 passed in I.A.No.522/2010 in O.S.No.135/2009 by the learned District Munsif Court, Uthamapalayam, and to allow the civil revision petition.

For Petitioner : Mr.M.Vallinayagam
For Respondents : Mr.V.George Raja for
M/s.M.Ajmal Associates

ORDER

The petitioner has filed the present revision against the order made in I.A.No.522 of 2010 in O.S.No.135 of 2009, dated 6.12.2010, on the file of the District Munsif Court, Uthamapalayam.

2.According to the petitioner, the respondents 1 to 3 have filed a suit in O.S.No.135 of 2009 for declaration and mandatory injunction and premanent injunction. In the aforesaid suit, the revision petitioner is the 2nd defendant. The respondents 1 to 3, who are the plaintiffs in the suit, have filed an application in I.A.No.311/2009 before the District Munsif Court, Uthamapalayam for appointment of an Advocate Commissioner to inspect the suit property with the help of a surveyor and to file a report and plan. The said application was allowed and an Advocate Commissioner was appointed and notice was served to the revision petitioner. However, on the date of inspection of the property by the Advocate Commissioner, the revision petitioner could not attend due to reasons as stated in the affidavit that he was in Thiruppathy on that day. After inspection, a report was filed by the Advocate Commissioner before the Court below. The application



in I.A.No.311 2009 has been filed on 23.08.2010 before the Court below to appoint the Advocate Commissioner along with the Surveyor to inspect the property and submit a report. The said application was dismissed. Therefore, the petitioner is before this Court with this Revision Petition.

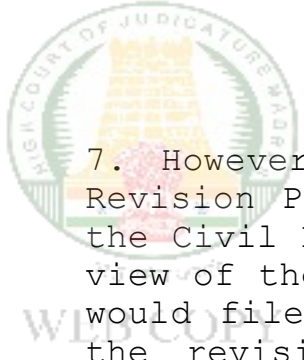
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3. According to the petitioner, the present application has been filed before the Court below. Then, the Advocate Commissioner served notice to the petitioner. It is an admitted fact that the learned counsel for the petitioner had informed him that the Commissioner will inspect the suit property. But, he was unable to attend at the time of inspection by the Advocate Commissioner due to the reason that he was in Thiruppathy. On completing the inspection, a report has been filed by the Advocate Commissioner before the Court below in the presence of the revision petitioner. The respondents filed the present application only on the basis of the sale deed dated 20.03.1995 for appointment of an Advocate Commissioner along with surveyor to measure the property so as to determine the real issues among the parties concerned in the Court below. In the absence of the said measurement, the real issues raised in the main suit cannot be determined by the Court below. Hence, there is a necessity to allow the said application. But during the course of argument, the learned counsel for the petitioner would submit that it is suffice that this Court could mold the said relief and direct the then Advocate Commissioner to re-inspect the suit property and to submit a report.

4. According to the respondents, the said application has been filed belatedly. Therefore, the contention of the revision petitioner cannot be accepted. Accordingly, the present revision filed by the petitioner is liable to be dismissed.

5. Taking into consideration of the submissions made by the learned counsel for the parties, it is an admitted fact that the Advocate Commissioner in IA No.311/2009, inspected the suit property and a report was also submitted before the Court below. At the time of the inspection, admittedly, either the revision petitioner or the learned counsel for the revision petitioner was not present in the suit property. It is in the interest of justice, to consider the request to revisit the suit property by the same Advocate Commissioner has to be considered by this Court. However, the application has been filed for the appointment of the Advocate Commissioner along with the surveyor to inspect the suit property.

6. In view of the submissions made by the learned counsel for the petitioner, this Court also mold the said relief and direct the Advocate Commissioner, namely, A.Yesu Thiruselvan, to reinspect the suit property and submit a report before the Court below.



7. However, this Court is not inclined to entertain the Civil Revision Petition filed by the revision petitioner. Accordingly, the Civil Revision Petition is dismissed, however with liberty. In view of the submissions made before this Court that the petitioner would file an appropriate application before the Court below for the revisit of the then Advocate Commissioner along with the certificate and submit a report to this Court, if any such application has been filed by the revision petitioner, within a period of two weeks from the date of receipt of a copy of this order, the same shall be considered in accordance with law, within a period of four weeks thereafter. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

RR

To

The District Munsif, Uthamapalayam.

+1CC to M/S.Ajmal Associates, Sr.No.69139

GJM/GSAV/PM/6.1.17-3p-3C

**C.R.P. (MD) No.1113 of 2011
and CMP No.8020/2016 and M.P.No.1 of 2011
15.11.2016**