

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) NO.299 OF 2017
AND CMP NO.1396 OF 2017

S.Sambandam

... Petitioner

Vs.

1.C.Suseela

2.C.Damodaran

3.C.Sampathkumar

4.P.Chandrasekar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 04.01.2017 made in I.A.No.523 of 2016 in O.S.No.941 of 2015 on the file of the Court of the Principal District Munsif, Alandur and submits the same is erroneous, illegal and liable to be set aside.

For Petitioner : Mr.S.Thangavel
 For Respondents : Mr.Silambanan
 Senior Counsel
 for Ms.Kavya Silambanan

ORDER

This Civil Revision Petition is directed against the order dated 04.01.2017, passed in I.A.No.523 of 2016 in O.S.No.941 of 2015, by the Principal District Munsif, Alandur, on an application filed under Order 26 Rule 9 read with 151 CPC, seeking appointment of Advocate Commissioner.

2.The petitioner is the plaintiff in the suit filed for declaration of the settlement deed executed by the defendants / respondents, as null and void and for consequential injunction. The contention of the petitioner is that the appointment of Advocate Commissioner was made on the application filed by the respondents / defendants.

3. In a suit of such nature, appointment of Advocate Commissioner is totally unnecessary and the parties shall agitate their claims on the basis of the records pertaining to the title.

4. On the other hand, the learned Senior Counsel appearing for the respondents would submit that in an earlier occasion, this Court in W.P.No.8340 of 2013, has appointed an Advocate Commissioner and it will elucidated the facts regarding land acquisition and division of survey numbers and their extents.

5. After some arguments, learned counsel on either side would submit that the settlement deed in question, before the Trial Court, has already been cancelled by the defendants and a fresh settlement deed has been executed. When this substantive issue itself is being diluted in cancellation of the settlement deed, the secondary issue, like appointment of Advocate Commissioner, naturally, will not survive. It is open to the parties to work out their remedies before the Trial Court in the manner known to law and the appointment of Advocate Commissioner at this stage, is not necessary, in view of the later developments. Therefore, the order dated 04.01.2017 passed in I.A.No.523 of 2016 in O.S.No.941 of 2015 by the learned Principal District Munsif, Alandur, does not survive and the parties are directed to work out their remedies in the

manner known to law.

6. With these observations and directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected civil miscellaneous petition is closed.

31.07.2017

Index : Yes/No
Internet : Yes/No
TK

To

The Principal District Munsif
Alandur.



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M.GOVINDARAJ, J.

TK



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