

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.458 of 2017

B.Rajamanickam

... Petitioner

v.

1.A.Ary

2.N.Ganesh

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 02.09.2016 in I.A.No.2264 of 2016 in O.S.No.5898 of 2009 on the file of learned XVII Assistant City Civil Judge, Chennai.

For Petitioner : Mr.G.Prem Anand Rao

ORDER

Challenging the fair and final order passed in I.A.No.2264 of 2016 in O.S.No.5898 of 2009 on the file of learned XVII Assistant Judge, City Civil Court, Chennai. the plaintiff has filed the above Civil Revision Petition.

2.1 The plaintiff filed the suit in O.S.No.5898 of 2009 for recovery of possession and permanent injunction.

2.2 In the said suit, the defendant took out an application in I.A.No.14137 of 2011 seeking for appointment of an Advocate commissioner to note down the physical features of the suit property. Accordingly, the Trial Court, appointed an Advocate Commissioner and the Advocate Commissioner also filed his report on 07.07.2014.

2.3 Thereafter, the plaintiff filed an application in I.A.No.2264 of 2016 under Order XXVI, Rule 10(3) of CPC to direct an enquiry to be made in connection with the paper filed by the Advocate Commissioner.

3. After contest, the Trial Court, dismissed the application.

4 Aggrieved over the said order, the plaintiff has filed the above Civil Revision Petition.

5. The main contention of the learned counsel for the petitioner is

that the plaintiff was not given an opportunity to file his objections to the Commissioner's report and therefore, the plaintiff is prejudiced by the report of the Advocate Commissioner. The learned counsel further submitted that the trial of the suit has not yet been commenced.

6. In view of the submissions made by the learned counsel appearing for the petitioner, I give liberty to the plaintiff to file his objections to the Commissioner's report dated 07.07.2014. Further, I also give liberty to the defendant to file his objections to the commissioner's report, if he is aggrieved over the same. The VII Assistant Judge, City Civil Court, Chennai is directed to consider the Advocate Commissioner's report and the objections filed by the parties and decide the suit, on merits and in accordance with law.

With these observations, the Civil Revision Petition is disposed of. No costs.

27.03.2017

Internet : Yes/No
Rj

To

The XVII Assistant Judge,
City Civil Court,
Chennai.

M. DURAISWAMY,J.,

Rj

C.R.P.(PD)No.458 of 2017

27.03.2017