

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM :

THE HONOURABLE MR.S.M.SUBRAMANIAM

C.R.P(PD).No.48 of 2014
and M.P.No.1 of 2014

Malayappan (died)
Kalimuthu

.. Petitioner

Vs.

1.Veluthai
2.Ranganayagi
3.Lakshmanasamy
4.Rangaraj
5.Mariappan
6.Ramaraj
7.Subbathal

.. Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 04.06.2013 passed in I.A. No.2497 of 2008 in I.A. No.1267 of 2006 in O.S. No.397 of 2006 on the file of the learned District Munsif, Udumalpet, Tirupur District.

For Petitioner : Mr.C.Veeraraghavan

For Respondents : No appearance for R1 toR4

ORDER

The second defendant in the suit filed the revision petition challenging the fair and decretal order passed in I.A. No.2497 of

2008 dated 04.06.2013. The suit is for permanent injunction and during pendency of the suit, Interlocutory Application in I.A. No.1267 of 2006 is filed seeking appointment of Advocate Commissioner, which was allowed by the Trial Court and accordingly, the Advocate Commissioner conducted and submitted his detailed report. The report of the Advocate Commissioner was objected and an affidavit was filed objecting the report of the Advocate Commissioner and further clarification was sought for by the revision petitioner.

2.Considering the facts and circumstances of the case, the Trial Court made a finding that there are certain discrepancies in the findings of the Advocate Commissioner's report, but the same will not affect the merits of the main suit itself. Further a minor mistake committed with regard to certain discrepancies otherwise cannot be construed as even entire report is erroneous. In all other aspects, the report of the Commissioner speaks about the identity and measurement of the suit schedule property. Further the Trial Court categorically found the objection raised by the revision petitioner and the Advocate Commissioner's Report is biased cannot be accepted and accordingly, the petition was rejected.

3.Learned counsel for the petitioner contented that the Advocate Commissioner has not recorded the field realities in a correct way and it was biased report and accordingly, the order passed by the Trial Court is to be set aside.

4.Considering the facts and circumstances of the case and it is a suit for permanent injunction wherein it is the duty of the plaintiff to establish his case through oral and documentary evidence and the Advocate Commissioner was appointed by the Court only to clarify the doubt arising in the mind of the Court and not to satisfy the parties to the suit. The appointment of an Advocate Commissioner is to eradicate doubts regarding the suit schedule properties in the mind of the Court and the parties cannot go on filing such applications in order to collect the evidence or to establish their case through the report of the Advocate Commissioner. Any such application filed with such an intention, the same is liable to be rejected in limini. Therefore, the intention of the parties while filing an application seeking Advocate Commissioner is to be found out and the Courts ought to be cautious while allowing such petitions seeking Advocate Commissioner. Such being the facts and circumstances of the case, this Court do not find any infirmity in

the

S.M.SUBRAMANIAM,J.

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order passed by the Trial Court and accordingly, the fair and decretal order passed in I.A. No.2497 of 2008 in I.A. No.1267 of 2006 in O.S. No.397 of 2006 on the file of the learned District Munsif, Udumalpet, Tirupur District is confirmed. This petition is dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed. No order as to costs.

24.02.2017

Index: Yes/ No

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To

The District Munsif,
Udumalpet, Tirupur District

C.R.P(PD).No.48 of 2014

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