

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR. **JUSTICE S.M.SUBRAMAINAM**

C.R.P.(P.D.) No.877 of 2014 &
M.P.No.1 of 2014

Senguntha Mudaliar Pavadi Panchayath
rep. By its President S.Kailasam

.. Petitioner

Vs.

Kongu Velalar Samuthayam
Rajagoudanpalayam
Tiruchengode Town
rep. By its President A.Muthu

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the Order passed in Unnumbered I.A. Of 2013 in I.A.No.517 of 2013 (Old 1A No.98/06) in O.S.No.238 of 2010 (Old OS No.88 of 2005) dated 5.9.2013, on the file of Sub Judge, Tiruchengode.

For Petitioner : Mr.V.S.Kesavan

ORDER

This Civil Revision Petition is filed challenging the order dated 05.09.2013, passed in Unnumbered I.A..... of 2013 in I.A.No.517 of 2013 (Old 1A No.98/06) in O.S.No.238 of 2010 (Old O.S No.88 of 2005) dated 5.9.2013, on the file of Sub Judge, Tiruchengode.

2.The learned counsel appearing for the petitioner submitted that the petitioner is the defendant in the Suit and the respondent filed the Suit for division of the Suit Property into two equal shares by metes and bounds and allot the souther half share to the plaintiff and for permanent injunctions. During the pendency of the Suit, the petitioner/defendant filed an Interlocutory Application in I.A.No.517 of 2013, seeking appointment of a Commissioner, which was rejected and challenging the same, he filed a Civil Revision Petition in C.R.P.(PD) No.1812 of 2009, before this Court and this Court passed an order on 19.03.2013, allowing the Petition and the order dated 24.04.2008, passed in I.A.No.98 of 2006 in O.S.No.88 of 2005, on the file of the learned Additional District Judge, Fast Track Court, Namakkal, was set aside and a direction was issued to the trial Court to appoint an Advocate Commissioner to inspect the suit property and to submit a detailed report in respect of physical features of the suit property.

3.Pursuant to the order passed by this Court in C.R.P.(PD) No.1812 of 2009, the Advocate Commissioner was appointed, who in turn submitted his detailed report before the trial Court and the trial is yet to be commenced. At this stage, once again the petitioner/defendant filed an Interlocutory Application in I.A..... of 2013 in I.A.No.517 of 2013 in O.S.No.238 of 2010, to direct the

Commissioner appointed in the above matter to survey and measure and locate the suit property with the help of the Village Administrative Officer and Municipal Surveyor and also to direct the Commissioner to note down the physical features available in the suit property.

4.Pursuant to the order passed by this Court in C.R.P.(PD) No.1812 of 2009, Advocate Commissioner was appointed, who in turn had submitted a detailed report before the trial Court and the trial is yet to be commenced. At this stage, once again, the petitioner/ defendant filed an Application in I.A.No.....of 2013, to direct the the Commissioner appointed in the above matter to survey and measure and locate the suit property with the help of the Village Administrative Officer and Municipal Surveyor and also to direct the Commissioner to note down the physical features available in the suit property.

5.The trial Court passed an order 05.09.2013, rejecting the petition on the ground that the Advocate Commissioner was appointed pursuant to the order passed by this Court in C.R.P.(PD) No.1812 of 2009 dated 19.03.2013 and accordingly, the Commissioner also inspected the suit property and submitted a detailed report in respect of the physical features of the property.

With regard to the measurement, as there was no order passed by this Court in the earlier Civil Revision Petition, the trial Court rejected the same.

6.Considering the arguments of the learned counsel for the petitioner, this Court is of the view that the petitioner/defendant cannot seek for a direction before the trial Court for re-appointment of the Advocate Commissioner with an idea to improve the claim of the petitioner in the Suit. Further, the appointment of the Commissioner cannot be used as a tool for collection of further evidence or for the purpose of improving the case by either of the parties in the Suit. The fact remains that this Court has already allowed the earlier Civil Revision Petition filed by the petitioner and an Advocate Commissioner was also appointed, who in turn submitted a detailed report regarding the physical features of the property.

7.The Suit has been filed for partition and the description of the suit property are very well furnished by the respondent/plaintiff in the Plaint itself and the burden of proof lies on the plaintiff to establish his case at the first instance and it is obligation on the part of the defendant to defend the suit, if he so desires. Such being the position, this Court is not inclined to issue any direction to the Commissioner to measure the property. Such a prayer at

this stage need not be entertained and the same will not only create further confusion and the Application was filed only with an idea to protract the issue.

8.In such view of this Court, the Civil Revision Petition is devoid of merits and the same is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

11.01.2017

Index : Yes
Internet : Yes
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To

The learned Sub Judge,
Tiruchengode.

S.M.SUBRAMANIAM, J.,

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