



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P(PD) (MD)No.1062 of 2017

and

C.M.P. (MD) . No.4725 of 2017

Palanidurai

.. Petitioner/Plaintiff

Vs.

Chandra

.. Respondent/Defendant

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to allow the above Civil Revision Petition and to set aside the fair and decreetal order dated 19.04.2017 made in I.A.No.190 of 2016 in O.S.No.124 of 2013 on the file of the Additional Subordinate Court, Kumbakonam.

For Petitioner : Mr.G.Gomathi Sankar

O R D E R

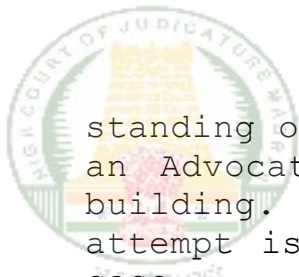
The Civil Revision Petition has been filed against the fair and decreetal order 19.04.2017 made in I.A.No.190 of 2016 in O.S.No.124 of 2013 on the file of the Additional Subordinate Court, Kumbakonam.

2.This Revision petition is directed against the dismissal of the application filed by the petitioner/plaintiff for appointment of an Advocate Commissioner to note down the physical features of the property. The main suit is for partition on the ground that the petitioner/plaintiff is an adopted son of one Kaliyamoorthy. The defendant is the wife of Kaliyamoorthy. On the demise of said Kaliyamoorthy, his adopted son, the revision petitioner herein, claims share in the property of Kaliyamoorthy.

3.This contention is vehemently opposed by the defendant and the case is now listed for argument, after completion of trial.

4.At this juncture, the Revision Petitioner herein, has taken out an application to appoint an Advocate Commissioner to note down the physical features of the property, alleging that the defendant is trying to demolish the building in the suit property.

5.The Trial Court has dismissed the application holding that the petitioner has already filed photographs of the building



standing on the suit property and there is no necessity to appoint an Advocate Commissioner to note down physical features of the building. By seeking appointment of Advocate Commissioner a veil attempt is made by the plaintiff to fishout the evidence for his case.

WEB COPY

6. Though the second part of the observation made by the Court may not be appropriate, the first part of the reasoning namely, when there is a photographic evidence placed before this Court, which shows that there are buildings in the suit property and the same fact being admitted by the defendant that there is no necessity to appoint an Advocate Commissioner to reinforce the same fact. In the partition suit if the petitioner succeed, the share of the petitioner is going to be apportioned approximately by metes and bounds in the final decree. At that point of time, the existence of building and other shops will be definitely taken note of by the Court. Hence, the appointment of Advocate Commissioner to note down the physical features, even before passing of decree is not necessary in the given factual matrix. Therefore, the order of the Trial Court needs no interference.

7. Accordingly, the Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Additional Subordinate Court,
Kumbakonam.

+1cc to Mr.G.Gomathi Sankar, Advocate Sr.No.58942

RM/SKM

VB/KKR/SAR4/19.06.2017/2P/3C

**C.R.P (PD) (MD) No.1062 of 2017
and
C.M.P. (MD) . No.4725 of 2017**

07.06.2017