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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

C.R.P (PD) (MD) Nos.1297 & 1298 of 2017

and

C.M.P. (MD) No.6320 of 2017

K.Tamilarasi

...Petitioner in both C.R.Ps.

-vs-

Muthaih

...Respondent in both C.R.Ps.

PRAYER in C.R.P. (PD) (MD) No.1297 of 2017: Civil Revision Petition is filed, Under Article 227 of the Constitution of India, to call for the records pertaining to I.A.No.455/15 in Original Suit No.93 of 2008, on the file of the learned District Munsif, Sattur, Virudhunagar District and to set aside the order passed therein dated 14.09.2016 and to permit the petitioner to let in evidence.

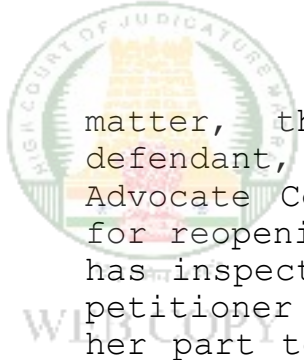
PRAYER in C.R.P. (PD) (MD) No.1298 of 2017: Civil Revision Petition is filed, Under Article 227 of the Constitution of India, to call for the records pertaining to I.A.No.95 of 2016 in I.A.No.437 of 2011 in Original Suit No.93 of 2008, on the file of the learned District Munsif, Sattur, Virudhunagar District and to set aside the order passed therein dated 05.10.2016 and to permit the petitioner to file her objection towards the report filed by the Advocate Commissioner.

For Petitioner	: Mr.C.M.Arumugam
For Respondent	: Mr.M.Solaisamy

COMMON ORDER

The revision petitioner / defendant has preferred two applications before the Court below. One is to reopen the case and the second is to receive objections to the Commissioner report.

2.It is found that the respondent / plaintiff has levied the suit for declaration and mandatory injunction. It is also found that in the year 2011 itself, the petitioner has endorsed no oral evidence and thereafter, when the matter is adjourned for further proceedings, at the instance of the respondent / plaintiff, an Advocate Commissioner was appointed and it is found that the Advocate Commissioner had filed the report on 16.10.2015. It is thereafter found that the matter was adjourned for further proceedings in the suit i.e. for arguments and at that stage of the



matter, the applications have preferred by the petitioner / defendant, namely to reopen the case and receive objections to the Advocate Commissioner report. The reason given by the petitioner for reopening the case is that inasmuch as the Advocate Commissioner has inspected the property recently and filed his report and as the petitioner has objection to the report, it has become necessary on her part to file her objections and therefore it is also necessary on her part to adduce evidence with reference to the report of the Commissioner by examining the commissioner etc., and hence, the petitions to reopen and to receive objections. The respondent / plaintiff resisted the applications preferred by the petitioner on the ground that the applications laid by the petitioner are intended only to delay the proceedings and hence the petitions should not be entertained.

3. On a consideration of the rival contentions put forth by the respective parties, it is found that the Court below has dismissed the applications preferred by the petitioner on the ground that no sufficient cause is shown to reopen the matter and the petitions have been levied only to delay the proceedings.

4. The arguments of the learned counsel for the petitioner is that the intention of the petitioner is not to delay the proceedings and on account of the subsequent developments which had occurred in the suit i.e. the appointment of Advocate Commissioner and report having been filed in the year 2015 and as the petitioner has several objections to the report of the Advocate Commissioner, it has become necessary on her part to file the said applications and hence in the interest of justice, the Court should have entertained the applications and since the Court having dismissed the applications, she has come forward with the revision petitions.

5. As seen from the arguments made by the learned counsel for the petitioner, it is found that the petitioner has given sufficient cause to reopen the matter and she has filed objections to the Commissioner report and hence she had insisted to adduce evidence with reference to the same. In such view of the matter, the finding of the Court below that no cause is given to reopen the matter cannot be accepted.

6. In the light of the above, I am of the considered view that in the interest of justice and in view of the subsequent developments which had taken place in the matter as discussed above, the petitioner should be given an opportunity to produce evidence with reference to the objections as against the Commissioner report.

7. Accordingly, the impugned orders passed by the Court below are liable to be set aside. Accordingly, the impugned orders are set aside and resultantly, the Civil Revision Petitions are allowed. No



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costs.
closed.

Consequently, the connected miscellaneous petition is

Sd/-

Assistant Registrar (CS-II)

/True Copy/

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Sub Assistant Registrar

To

The District Munsif,
Sattur, Virudhunagar District.

+1cc to Mr.C.M.ARUMUGAM Advocate in SR. No. 72233

MYR

JS/KP/SAR.1/11.09.2017/ 3P-3C

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