



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.165 of 2017 (PD)

Udaiyanachi

.. Petitioner/Petitioner/Plaintiff

Vs.

1. The Government of Tamil Nadu,
Rep. By the District Collector,
Ramanathapuram District,
Ramanathapuram.

2. The Tahsildar,
Thiruvadanai Taluk,
Ramanathapuram District.

.. Respondents/Respondents/Defendants

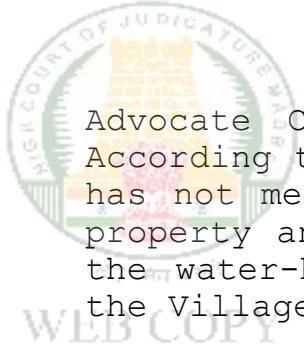
PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Fair and decreetal order in I.A.No.357 of 2016 in O.S.No.85 of 2011, dated 18.11.2016, on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruvadanai and allow this Civil Revision Petition.

For Petitioner : Mr.P.Muthusamy

ORDER

This petition has been filed by the petitioner to set aside the Fair and decreetal order in I.A.No.357 of 2016 in O.S.No.85 of 2011, dated 18.11.2016 passed by the District Munsif-cum-Judicial Magistrate, Thiruvadanai.

2.The petitioner is the plaintiff. The respondents are the defendants. The petitioner filed suit in O.S.No.85 of 2011 before the learned District Munsif-cum-Judicial Magistrate, Thiruvadanai for declaration and injunction. She filed I.A.No.784 of 2015 for appointment of Advocate Commissioner to measure the suit property and to file report. In the said application, an Advocate Commissioner was appointed on 24.08.2016 and he inspected the property on 04.09.2016 and filed his report. The petitioner subsequently filed I.A.No.357 of 2016 for scrap the report of the



Advocate Commissioner and appoint another Advocate Commissioner. According to the petitioner, Advocate Commissioner already appointed has not mentioned the boundaries and physical features of the suit property and failed to mention that suit property is far away from the water-body and he has not mentioned the informations given by the Village Administrative Officer.

3.The learned Judge considering the materials on record and report of the Advocate Commissioner, dismissed the application holding that particulars in the report of the Advocate Commissioner is sufficient to decide the issue in the suit. The informations given by the Village Administrative Officer are not necessary to mention in the report of the Advocate Commissioner. An Advocate Commissioner cannot give a report as to who is in possession of the property.

4.Against the said order of dismissal, the petitioner has filed the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner reiterated the averments mentioned in the affidavit filed in support of the I.A.No.357 of 2016 and grounds raised in the present Civil Revision Petition. He further submitted that an Advocate Commissioner did not properly note down the physical features and measurement of the suit property and filed his report in a mechanical manner as per the instructions given by the respondent. The learned Judge has not properly appreciated the provisions of Order 26 Rule 10(3) of the Civil Procedure Code.

6. I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

7.From the materials on record, it is seen that on the application filed by the petitioner in I.A.No.784 of 2015 an Advocate Commissioner was appointed and he inspected the property and filed his report. The petitioner has not filed any objection to the said report. The learned Judge has considered the contentions of the petitioner for scraping the Advocate Commissioner's Report and for appointment of another Advocate Commissioner and all other materials on record and held that all particulars mentioned in the report of the Advocate Commissioner is sufficient to decide the issue in the suit. The learned Judge also held that an Advocate Commissioner cannot give report with regard to possession of the property. It is well settled that Advocate Commissioner's report is only to assist the Court and the learned Judge can either accept or reject the report of the Advocate Commissioner. Further, the petitioner can examine the Advocate Commissioner during trial. The learned Judge has properly considered all the materials on record and dismissed the application and there is no illegality or irregularity warranting interference by this Court.



8. In the result, the Civil Revision Petition is dismissed. No costs.

WEB COPY

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate,
Thiruvadanai.

+ 1 CC TO Mr.P.MUTHUSAMY, ADVOCATE IN SR No. 7469

AM

TE/CM-MSA : 17/02/2017 : 3P/3C

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