



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 01.02.2017

CORAM:

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**THE HONOURABLE MS.JUSTICE V.M. VELUMANI**

CRP(MD).No.203 of 2017 and  
CMP(MD).No.915 of 2017

K. Balasubramanian

: Petitioner

Vs.

1.Mariammal  
2.Venkatesan  
3.K.Kannan

: Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in I.A.No.890 of 2016 in I.A.No.371 of 2014 in O.S.No.93 of 2014 on the file of the Principal District Munsif Court, Srivilliputur, dated 02.11.2016.

For Petitioner

: Mr. T. Antony Arulraj

### **O R D E R**

This Civil Revision Petition is filed to set aside the fair and decreetal order made in I.A.No.890 of 2016 in I.A.No.371 of 2014 in O.S.No.93 of 2014 on the file of the Principal District Munsif Court, Srivilliputur, dated 02.11.2016.

2. The petitioner is the first defendant in in O.S.No.93 of 2014, on the file of the Principal District Munsif Court, Srivilliputur. The respondents 1 and 2 / plaintiffs filed suit for injunction restraining the petitioner from interfering with their peaceful possession and enjoyment of the same. The respondents along with suit filed I.A.No.371 of 2014, for an appointment of Advocate Commissioner. The said application was allowed and an Advocate Commissioner was appointed. The Advocate Commissioner inspected the suit property and filed his report on 08.10.2014. The petitioner filed present Interlocutory Application in I.A.No.890 of 2016 in I.A.No.371 of 2014, for re-issue of the warrant to the same Advocate Commissioner, to inspect the suit property of the respondents and adjacent property, with the help of the Village Administrative Officer and land Surveyor.

3. The Advocate Commissioner appointed in I.A.No.371 of 2014 inspected the property and filed his report. The petitioner also filed his objections. Trial has commenced. The said Advocate Commissioner without the help of the Village Administrative Officer and Surveyor inspected the property and filed his report. Therefore, it is necessary for re-issue of warrant to the same Advocate Commissioner.



4. The respondents filed counter affidavit and submitted that the Advocate Commissioner earlier appointed was inspected the property in the presence of the petitioner. The Advocate Commissioner has filed his report on 08.10.2014. The trial commenced. The respondents have examined PW.1 in Chief and suit is posted for cross examination of PW.1. At that stage, the petitioner filed I.A.No.890 of 2016, only to drag on the proceedings.

5. The learned Judge considering the averments made in the affidavit and counter affidavit and the report of the earlier Advocate Commissioner filed and also considering the the fact that the petitioner did not give any memo of instructions for measuring the property with the help of the Surveyor and Village Administrative Officer and an Advocate Commissioner has inspected the property and submitted his report, once again the property cannot be measured and dismissed the application.

6. Against the said order of dismissal, the present Civil Revision Petition has been field.

7. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

8. From the materials available on record it is seen that earlier Advocate Commissioner was appointed in I.A.No.371 of 2014, by the Court, to inspect the suit property. The Advocate Commissioner inspected the suit property and filed his report on 08.10.2014. At that time of inspection, the petitioner did not insist the Advocate Commissioner that the property can be identified, only with the help of Surveyor and can be measured only with the help of Village Administrative Officer. The petitioner filed his objections to the Commissioner's report filed on 08.10.2014. The trial was commenced and when it is posted for cross examination of PW.1, the petitioner has come out with the present application, after two years of the report of the Advocate Commissioner. It is for the learned Judge to consider the report of the Advocate Commissioner along with the objections filed by the petitioner and decide whether to accept the Advocate Commissioner's report as additional material to decide the issue in the suit or reject the same. The present Interlocutory Application is filed after two years of the report of the Advocate Commissioner and after commencement of trial. The reason given by the petitioner for re-issue of warrant for the same Advocate Commissioner is not acceptable.

9. The learned Judge has considered all the materials on record in proper perspective and has given cogent and valid reasons for dismissing the I.A.No.890 of 2016 in I.A.No.371 of 2014 in O.S.No.93 of 2014. Further, the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.



10. In the result, the Civil Revision Petition is dismissed.  
No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-  
Assistant Registrar(Writs)

/TRUE COPY/

Sub Assistant Registrar

To

The Principal District Munsif Court, Srivilliputur.

+1 cc to MR.T.Antony ArulRaj, ADVOCATE, SR NO:5752

trp

sva/mr/13.03.2017/3p/3c

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