



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.255 of 2017 (PD)

and

C.M.P (MD) No.1161 of 2017

Murugapathi Raja

.. Petitioner/Respondent/Plaintiff

Vs.

The Commissioner,
Rajapalayam Municipality,
Rajapalayam Town,
Virudhunagar District.

.. Respondent/Petitioner/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Fair and Decretal order dated 05.01.2016 passed in I.A.No.964 of 2015 in O.S.No.20 of 2013 on the file of the Learned Principal District Munsif Court, Srivilliputhur and allow the present Civil Revision Petition.

For Petitioner : Mr.K.Gokul

ORDER

This petition has been filed by the petitioner to set aside the Fair and Decretal order, dated 05.01.2016 passed in I.A.No.964 of 2015 in O.S.No.20 of 2013 by the Learned Principal District Munsif, Srivilliputhur.

2.The petitioner is the plaintiff. The respondent is the defendant. The petitioner filed suit in O.S.No.20 of 2013 before the learned Principal District Munsif, Srivilliputhur for declaration that property tax assessed in respect of the suit schedule property is null and void. The respondent Municipality filed I.A.No.964 of 2015 for appointment of Advocate Commissioner on the ground that the petitioner has suppressed the construction put up by him in the property. The respondent Municipality stated that, in the plaint the petitioner has stated that the petitioner has not put up any construction. In the circumstances, the respondent has contended that it is necessary for appointment of Advocate Commissioner to inspect and note down the physical features and nature of construction put up by the petitioners so that issues in the suit can be properly decided.

3.In the I.A., the petitioner filed counter affidavit and reiterated the averments made in the plaint and denied all the



averments made in the affidavit.

4.The learned Judge considering the claim of the respondent Municipality about new construction and denial by petitioner, appointed an Advocate Commissioner so that oral evidence to decide the issue in the suit could be reduced.

5.Against the said order, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner submitted that the learned Judge failed to consider the averments made by the petitioner that no construction was put up by him. The respondent Municipality without following the procedure for assessment of the property has assessed the property tax. The petitioner has filed the suit challenging the order of assessment of the property tax made by the respondent on the ground that said assessment was made in violation of District Municipalities Act and without notice to him. According to the petitioner, he has not put up any new construction. On the other hand the respondent Municipality contended that the petitioner has constructed new construction in the ground floor as well as in the first floor. In view of the rival contention, the learned Judge has rightly appointed an Advocate Commissioner to note down the physical features as well as the nature of construction, so that the oral evidence to decide the issue in the suit will be reduced. 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. The learned Judge has rightly exercised his jurisdiction conferred on him and there is no illegality or irregularity warranting interference by this Court.

7.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AE)

/TRUE COPY/

Sub Assistant Registrar

To

The Principal District Munsif,
Srivilliputhur.

+1 cc to Mr.K.Gokul, Advocate, SR.No:7569