



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) No.2561 of 2017 (PD)
and
CMP (MD) No.11910 of 2017

Amirthakani

... Appellant

Vs.

1.Muthammal
2.Madasamy
3.Ganesan
4.Arunachala Vadivu
5.Rajammal
6.Gunaseelan
7.Velusamy
8.Narayana Perumal
9.Arunachala Vadivu
10.Madasamy
11.Sudalai
12.Sadaiyappan
13.P.Muthu
14.Arunachala Vadivammal

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure Code to set aside the fair and decreetal order dated 13.10.2017 in E.A.No.300 of 2017 in E.A.No.583 of 2009 in E.P.No.139 of 2008 in O.S.No.110 of 1996 on the file of the Principal District Munsif Court, Thoothukudi.

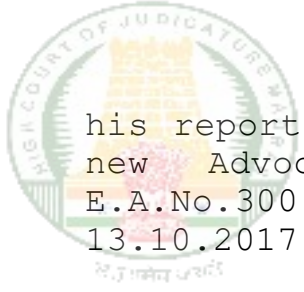
For Petitioner

: Mr.M.P.Senthil

O R D E R

The revision petitioner herein filed an application under Order 21 Rule 58 of C.P.C. in E.P.No.139 of 2008 in O.S.No.110 1996 on the file of the District Munsif Court, Thoothukudi.

2.One Muthammal is the plaintiff in the suit. The revision petitioner herein had purchased a plot from one Arunachala Vadivu who was shown as the third defendant in the suit. The decree has become final. The E.P itself was filed way back in the year 2008. An Advocate Commissioner was appointed. The said Advocate Commissioner filed his report stating that the property in question could not be identified. Therefore, the second Advocate Commissioner was appointed. The said Advocate Commissioner filed



his report on 16.08.2017. To scrap the same and for appointing a new Advocate Commissioner, the revision petitioner filed E.A.No.300 of 2017. The same was dismissed by order dated 13.10.2017. The revision petitioner is aggrieved by the same.

3. Heard the learned counsel appearing for the revision petitioner.

4. The learned counsel appearing for the revision petitioner is right in his submission that one of the reasons assigned by the Trial Court that without an application for scrapping the earlier report, an application for appointment of a fresh Advocate Commissioner cannot be maintained is not correct.

5. I went through the affidavit filed in support of E.A.No.300 of 2017 and it does contain a prayer for scrapping for the earlier report dated 16.08.2017. Though one of the reasons found in the impugned order is incorrect, the order does not warrant any interference. The suit is of the year 1996. Admittedly, the predecessor-in-title of the revision petitioner was a party to the suit proceedings. Therefore, the revision petitioner claiming through one of the defendants who suffered a decree cannot set up any independent right.

6. The revision petitioner has not made out a case for scrapping of the report of the Advocate Commissioner. However, it appears that the boundaries given in the Advocate Commissioner's report are not entirely correct. The Advocate Commissioner's report reads that to the South of the suit property, Plot No.34 lies. Even, the counter filed by the plaintiff reads that the Southern boundary mentioned in the Advocate Commissioner's report is erroneous and that the actual Plot Number is 36 only.

7. In that view of the matter while sustaining the impugned order, liberty is given to the revision petitioner to file an application for re-issuance of warrant. I make it clear that I have not pronounced anything on the merits of the matter. Such an application to be filed by the revision petitioner will be considered entirely on its own merits and in accordance with law.

7. With these observations, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/



To

1. The Principal District Munsif, Thoothukudi.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1CC TO M/S.M.P.SENTHIL, ADVOCATE, SR NO.94584

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