



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(MD).No.28 of 2017 (PD) &
C.M.P.(MD).No.130 of 2017

Susanna Jeba Lilly ... Petitioner/Petitioner/Plaintiff

Vs.

- 1.Thomas
- 2.Antony Berdinent Raja
- 3.Yesudhas
- 4.The Executive Officer,
Kaliyakkavilai Town Panchayat,
Vilavancode Village,
Vilavancode Taluk,
Kanyakumari District
- 5.The District Collector,
Kanyakumari District at Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents/Respondents/Defendants

Prayer: Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 07.11.2016 passed in I.A.No.382 of 2016 in O.S.No.29 of 2015 by the Principal District Munsif, Kuzhithurai, ordering the Commission application was dismissed.

For Petitioner : Mr.M.Punitha Deva Kumar

For Respondent No.4 : Mr.V.Karthikeyan for R4

For Respondent Nos.1 to 3 : No Appearance

Mr.V.Muruganandam for R5
Additional Government Pleader

ORDER

The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit in O.S.No.29 of 2015 before the Principal District Munsif, Kuzhithurai, for declaration and injunction. Pending suit, the petitioner filed an application in I.A.No.382 of 2016 to appoint an Advocate Commissioner. The said application was dismissed aggrieved against the said order, the petitioner is before this Court.



2. As per the case of the petitioner/plaintiff, the B-Schedule property situated on the eastern side of "A" schedule property in which Panchayat road alleged to be exist. On the other hand, the respondents/defendants denied as to the description of the property and stated that next to "A" schedule property, the defendants 1 to 4 property lies and next to east of their property, the alleged Panchayat road exists. While so, the petitioner filed a petition to appoint an Advocate Commissioner to facilitate the Court to come to the conclusion. The learned Judge has simply dismissed the application stating that the Commissioner cannot be appointed for collecting evidence.

3. Heard the learned counsel for the petitioner, learned counsel for the fourth respondent and the learned Additional Government Pleader for the fifth respondent.

4. A perusal of the impugned order would go to show that the learned Trial Judge without even assigning any reasoning simply passed an order dismissing the petition to appoint an Advocate Commissioner and it is only a cryptic order. In my considered opinion, the appointment of Advocate Commissioner in a case of this nature would only facilitate the learned Judge to render proper justice. Therefore, I am inclined to interfere with the order passed by the learned Trial Judge. Accordingly, the order passed in I.A.No.382 of 2016 in O.S.No.29 of 2015 is set aside. The civil revision petition is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1.The Principal District Munsif, Kuzhithurai.

2.The Chief Judicial Magistrate,

Kanyakumari at Nagercoil

+One cc to Mr.M.Punitha Deva Kumar, Advocate, SR.No.87174

+One cc to Mr.V.Karthikeyan, Advocate, SR.No.87126

+One cc to The Special Government Pleader, SR.No.87493

jikr

RL/6C/2P/SKN/RSK/SAR1/27/11/2017

Order made in
C.R.P. (MD).No.28 of 2017 (PD) &
C.M.P. (MD).No.130 of 2017
14.11.2017