



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2017
(Reserved on 21.04.2017)

WEB COPY

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (PD) (MD) No. 634 of 2017

and

CMP (MD) No. 2886 of 2017

M. Subbukannu

... Petitioner

vs.

1) P. Shanmugan

2) S. Jegathambal

... Respondents

Petition filed under Article 227 of the Constitution of India, against the dismissal order passed by the District Munsif Court, Aranthangi, in I.A.No.1148 of 2016 in O.S.No.5 of 2016 dated 10.01.2017.

For Petitioner : Mr.N.Balakrishnan

For Respondents : Mr.K.Baalasundharam

ORDER

This revision petition is directed against the dismissal of the interlocutory application filed by the revision petitioner for appointment of Advocate Commissioner.

2.The suit was filed by the respondents herein/plaintiffs for declaration of right in the pathway and mandatory injunction. The 1st defendant who is the revision petitioner herein has taken out an application for appointment of Advocate Commissioner and pursuant to the order passed by the Trial Court, the Commissioner has inspected the disputed property and has filed his report on 16.08.2016. The revision petitioner has filed his objection to the Commissioner report and also has filed another application to appoint Advocate Commissioner to measure the property with the help of Village Administrative Officer and Surveyor.

3.The Court below has dismissed the second application on the ground that already the Commissioner has inspected the suit property and has filed his report with rough sketch. While so, there is no specific reason stated why again Commissioner should inspect the premises and measure the property with the help of surveyor. The Trial Court has held that if the 1st defendant is



aggrieved by the report of the Commissioner, he can disprove the same through his witnesses during the course of trial and no situation warrants for further inspection of the suit property by the Advocate Commissioner and to measure the same.

WEB COPY

4.This Court after notice to the respondents heard both sides.

5.The counsel for the revision petitioner submitted that since the alleged Commissioner report is bereft of certain details including the measurements, if the suit property is inspected and measured with the help of a qualified surveyor, the exact physical feature of the suit property can be properly ascertained.

6.The counsel appearing for the respondents has no objection for appointing Advocate Commissioner for the said limited purpose.

7.In view of the above submissions, the Civil Revision Petition is allowed and the order passed by the Trial Court in I.A.No.1148 of 2016 in O.S.No.5 of 2016 dated 10.01.2017 is set aside. I.A.No.1148 of 2016 is remanded back to the Trial Court to appoint an Advocate Commissioner and to issue appropriate directions to the said Advocate Commissioner to measure the property with the help of any qualified surveyor. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The District Munsif,
Aranthangi.

+1 CC to MR.N.BALAKRISHNAN, Advocate, SR No. 54010

+1 CC to MR.K.BALASUNDARAM, Advocate, SR No. 54032

NBI

PSM/SKN/02.05.2017/2P/4C

Pre-Delivery order made in
CRP(PD) (MD)No.634 of 2017
25.04.2017