



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2017

CORAM :

THE HONOURABLE DR.JUSTICE **G. JAYACHANDRAN**

CRP(PD) (MD) No.2188 of 2016
and
CMP(MD) No.10162 of 2016

Ponmadasamy ... Petitioner/1st Respondent/1st Plaintiff
vs.

1) Antoniammal
2) Praba ... Respondents 1&2/Petitioners/Defendants 1&2
3) Sekar
4) Soundararajan ... Respondents 3&4/Respondents 2&3/Plaintiff 2&3
5) Jaqueline
6) Clitus
7) Pushpathai
8) Suresh Kumar
9) Loganathan
10) P.Thangaraj ... Respondents 5 to 10 / Respondents 5 to 10 /
Defendants 4 to 9

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.101/2016 in O.S.No.67/2012 on the file of Additional District Munsif Court, Thoothukudi, dated 18.08.2016.

For Petitioner : Mr.M.R.S.Prabhu
For Respondents : M/S.R.Vijayakumar

ORDER

This revision petition is directed against the order passed by the Trial Court allowing the application to appoint the Advocate Commissioner to note down the physical features of the suit property with the help of Surveyor and submit a report.

2.The 1st plaintiff who is the revision petitioner herein is aggrieved by the order of the Trial Court for the reason that there is no necessity for appointing Advocate Commissioner to measure the suit property since the properties were already demarcated with specific boundaries and the purpose of appointing Advocate Commissioner is only for collecting evidence.



3. The present application to appoint Advocate Commissioner just before commencement of trial is only to protract the proceedings and to harass the plaintiffs. Knowing fully well that the defendants have no chance of success just to protract the proceedings, vexatious petition has been filed and the Trial Court without considering the ulterior intention of the defendants have allowed the petition.

4. The petitioner being a bonafide purchaser of the suit schedule property is put to grave inconvenience by the impugned order appointing Advocate Commissioner just before the commencement of trial.

5. While there are 16 items in the suit schedule property, the defendants 1 and 2 claiming right in respect of 10 cents of land without identifying in which item of property, they claim right of 10 cents, have sought appointment of Commissioner to measure all the 16 items of suit property. The Trial Court without considering the said fact has allowed the application for appointment of Commissioner to inspect and measure all the 16 items, which is nothing but a futile exercise.

6. The respondents herein contended that there is no error in the order passed by the Trial Court and the revision petitioner will no way be prejudiced by the said order.

7. Perusal of the affidavit filed by the 2nd defendant in support of his application for appointing Advocate Commissioner, this Court finds that the claim of the defendant is only in respect of 10 cents of land. While so, measuring all the 16 items of property shown in the suit schedule is not necessary and if such an application is allowed, it will only lead to making roving enquiry and collection of evidence through Advocate Commissioner.

8. Therefore, there is a point in the submission made by the revision petitioner that the Trial Court without proper application of mind has allowed the application to measure all the 16 items of property shown in the suit schedule. At the same time, as contended by the learned counsel for the respondents, 10 cents dispute is only in respect of items 12 and 13 and atleast the Commissioner should inspect items 12 and 13 of the suit schedule property for proper adjudication of the dispute.

9. Therefore, the Civil Revision Petition is allowed. The order of the Trial Court in I.A.No.101/2016 in O.S.No.67/2012 dated 18.08.2016, appointing Advocate Commissioner to measure all the 16 items of property is modified to the effect that the Advocate Commissioner shall measure the suit property and file his



report in respect of items 12 and 13 alone of the suit schedule properties. No costs. Consequently, connected miscellaneous petition is closed.

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/True Copy/

Sd/-

Assistant Registrar (CS-I)

Sub Assistant Registrar

To

The Additional District Munsif Court,
Thoothukudi.

+1cc to M/S.S.PRABHU, Advocate SR.No. 54270

+2cc to M/S.R.VIJAYAKUMAR, Advocate SR.No.54334,53710

Pre-Delivery order made in
CRP (PD) (MD) No.2188 of 2016
26.04.2017

JM/MMS/08.05.2017/3P/5C