



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.2652 of 2016 (PD)

&

C.M.P.(MD)No.12463 of 2016

Kumaran, S/o.Thangadurai

.. Petitioner

Vs.

Ganesan, S/o.Rajamani

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 15.07.2016, made in I.A.No.1862 of 2015 in O.S.No.221 of 2015, on the file of the Principal District Munsif Court, Valliyoor, Tirunelveli District.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.Ramasamy

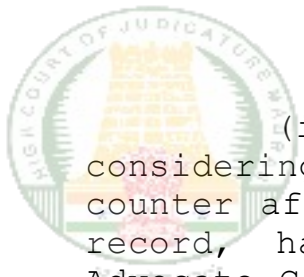
ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 15.07.2016, made in I.A.No.1862 of 2015 in O.S.No.221 of 2015, on the file of the Principal District Munsif Court, Valliyoor, Tirunelveli District.

2. Facts of the case:

(i) The petitioner is the plaintiff and the respondent is the defendant in the suit in O.S.No.221 of 2015 on the file of the Principal District Munsif Court, Valliyoor, Tirunelveli District. The petitioner filed the said suit for declaration of title of the 2nd schedule property, recovery of possession and also for mandatory injunction. The respondent filed I.A.No.1862 of 2015 for appointment of Advocate Commissioner to measure the suit scheduled properties. According to the respondent, the petitioner filed the suit in respect of the property in between the land of the respondent and the petitioner with false averments. Only when the Advocate Commissioner measure the property with the help of Surveyor and file his report, the Court can come to the correct conclusion to decide the issue. The petitioner has not filed any application for appointment of Advocate Commissioner only due to the fact that if the Commissioner measured the property with the help of Surveyor, the real position will be known to the Court, which will falsify the case of the petitioner.

(ii) The petitioner filed counter affidavit and opposed the said application. According to the petitioner, already the Surveyor measured the suit property and therefore, the respondent can examine the Surveyor and other Officials.



(iii) The learned Principal District Munsif, Valliyoor, considering the averments mentioned in the affidavit and the counter affidavit and also considering the materials available on record, has come to the conclusion that the appointment of Advocate Commissioner is necessary and the Advocate Commissioner's report will assist the Court in deciding the issue and appointed an Advocate Commissioner.

3. Against the said order dated 15.07.2016, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel for the petitioner submitted that the learned Principal District Munsif, Valliyoor, failed to take into account the various proceedings including the writ proceedings between the parties. The learned Principal District Munsif ought to have seen that already Surveyor measured the land and therefore, there is no necessity for appointment of Advocate Commissioner for the very same purpose. The learned Principal District Munsif failed to see that it is for the petitioner to prove his case and by appointment of Advocate Commissioner, the respondent is collecting evidence.

5. The learned counsel for the respondent/caveator submitted that in the facts and circumstances of the case, it is just and necessary for appointment of Advocate Commissioner to inspect and measure the property and file his report to assist the Court to decide the issue. The learned Principal District Munsif has given valid reason for appointment of Advocate Commissioner and prayed for dismissal of the Civil Revision Petition.

6. I have heard the learned counsel for the petitioner and the respondent and carefully perused the materials available on record.

7. The respondent filed an application for appointment of Advocate Commissioner on the ground that the relief sought for by the petitioner is with regard to land between the property of the petitioner and the respondent and only when the property is measured by the Advocate Commissioner and report is filed, the Court can come to the correct conclusion in deciding the issue. The learned Principal District Munsif has considered all the materials in proper perspective and has given acceptable reason for appointment of Advocate Commissioner, i.e., report of Advocate Commissioner would assist the Court in deciding the issue. There is no irregularity and illegality in the order passed by the learned Principal District Munsif warranting interference by this Court.

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

Sd/-

Assistant Registrar(AE)

/True copy/



To
The Principal District Munsif,
Valliyoor,
Tirunelveli District.

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AES/RR-ME/SAR2/27.01.2017/3p/2c

C.R.P. (MD) No. 2652 of 2016 (PD)
& C.M.P. (MD) No. 12463 of 2016
03.01.2017