

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.06.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(PD)No.1748 of 2018 and
C.M.P.No.9626 of 2018

Murugan

... Petitioner

Vs.

1. Sivakumari
2. Selvakumari

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the docket order in I.A.No.411 of 2017 in O.S.No.127 of 2017 dated 13.11.2017 on the file of the learned Principal District Judge, Cuddalore.

For Petitioner : Mr.N.Suresh

ORDER

This civil revision petition has been filed against the docket order in I.A.No.411 of 2017 in O.S.No.127 of 2017 dated 13.11.2017 on the file of the learned Principal District Judge, Cuddalore.

2 The petitioner is defendant in the suit filed by the respondents herein in O.S.No.127 of 2017 for partition and separate possession. The respondents/plaintiffs filed an interlocutory application in I.A.No.411 of 2017 seeking appointment of Advocate Commissioner

to inspect the suit properties, note down the physical features, the number of trees, any trees cut, their approximate age etc., and to file a report and plan and the said application was allowed by docket order dated 13.11.2017.

3 Aggrieved against the above said order dated 13.11.2017 made in I.A.No.411 of 2017, the defendant is before this Court with the present civil revision petition.

4 The learned counsel for the revision petitioner/defendant would submit that an Advocate Commissioner cannot be appointed for the purpose of proving the case of the respondents/plaintiffs. The Advocate Commissioner is not an expert to find out the age of the trees etc., as prayed for by the respondents/plaintiffs. The trial court failed to see the above facts and erroneously allowed the application. The learned counsel further contended that appointment of Advocate Commissioner would help the respondents/plaintiffs to create additional evidence to prove their claim, which is against law. Hence the order dated 13.11.2017 passed in I.A.No.411 of 2017 is liable to be set aside.

5 Heard the learned counsel for the revision petitioner and perused the materials available on record.

6 On a perusal of the records, it is seen that the respondents herein filed a suit in O.S.No.127 of 2017 for partition and separate possession, in which the revision petitioner/defendant filed his written statement. Since the revision petitioner/defendant started to cut down the trees grown at the suit properties, the respondents/plaintiffs filed an interlocutory application seeking appointment of an Advocate Commissioner to note down the physical features, the number of trees, any trees cut, their approximate age etc., The trial Court after hearing both sides allowed the application by an order dated 13.11.2017.

7 Under these circumstances, this Court is of the view that appointment of Advocate Commissioner is just and necessary to assist the Court to decide the actual position in the suit properties. This Court does not find any illegality or infirmity in the order dated 13.11.2017 passed by the trial Court.

8 In view of the above, the order dated 13.11.2017 made in I.A.No.411 of 2017 is hereby confirmed with the following modifications:

- 1) The learned Advocate Commissioner is directed to issue notice to both the parties in advance fixing the date of inspection and respective parties may give memo of instructions to the Advocate Commissioner.
- 2) The learned Advocate Commissioner is further directed to take assistance from the Forest Department by engaging an expert in the cadre of Forest Ranger, who is able to find out the age of trees, number of trees which were already in existence and how many trees were cut in the suit properties and to file a report in accordance with law before the Trial Court.

9 With the above directions, the civil revision petition is disposed of. Consequently, connected miscellaneous petition is closed.
No costs.

11.06.2018

Internet: Yes/No
Index: Yes/No

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To
The Principal District Judge,
Cuddalore.

P.VELMURUGAN, J.,

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