IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD).No.884 of 2018 &
C.M.P.No.4848 of 2018

Sri Prathyangira Swamy
Sri Prathyangira Swamy Chittar Peedam Trust,
School Road,
Abarajithapuri, Sholinganallur.
.. Petitioner

vs.

K.M.Venugopal .. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of appointment of Advocate Commissioner passed by the District Munsif Court, Alandur in the fair and decreetal order made in I.A.No.443 of 2016 in O.S.No.683 of 2014 dated 10.08.2017.

For Petitioner ... M/s.A.Palaniappan

For Respondent ...Mr.T.Murugamanickam
and Mr.P.Kannan

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O R D E R

The Civil Revision Petition has been filed by the petitioner against the order passed by learned District Munsif Court, Alandur, in I.A.No.443 of 2016 in O.S.No.683 of 2014 dated 10.08.2017.

2. The respondent/plaintiff filed I.A.No.443 of 2016 in O.S.No.683 of 2014 on the file of District Munsif Court, Alandur, seeking to appoint an Advocate Commissioner to measure the suit property with the help of Head Surveyor and to take photographs. The petitioner/defendant has filed counter stating that the suit is only for bare injunction and the respondent/plaintiff has filed the present petition belatedly only for the purpose of patching up the laches and to create evidence and prayed to dismiss the application.

3. The trial Court, after hearing the arguments, allowed the application under the impugned order and aggrieved against the order passed by the trial Court, the petitioner is before this Court.

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4. The learned counsel for the petitioner/defendant submitted that the suit is only for bare injunction and the trial Court has erred in

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allowing the interlocutory application seeking appointment of an Advocate Commissioner, which has been filed belatedly.

5. The learned counsel appearing for the respondent/plaintiff would submit that since there is a dispute with regard to the title of the property in question, appointment of Advocate Commissioner for taking measurement of the property is not required.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

7. The main contention of learned counsel for petitioner/defendant is that the suit is only for bare injunction and the trial Court has erred in allowing the interlocutory application seeking appointment of an Advocate Commissioner, which has been filed belatedly and the same was filed only to patch up the laches and to create evidence. In support of his contention, learned counsel placed reliance on the judgment of this court and submitted that in a suit which has been filed only for bare injunction, there is no need to appoint Advocate Commissioner.

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8. A perusal of the records, the respondent has filed only suit of bear injunction further an Advocate Commissioner can not be appointed either to establish possession or to collect evidence. This is the suit for bear injunction the respondent has to prove his passion through his oral and documentary evidence but not through Advocate Commissioner.

9. In view of the above said reason, the Civil Revision Petition is allowed and the order passed by the Trial Court in I.A.No.443 of 2016 in O.S.No.683 of 2014 dated 10.08.2017, is set aside aside. No costs. Consequently, connected miscellaneous petition is closed.

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To

The District Munsif Court,
Alandur.

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