



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.413 of 2018 (PD)

and

CMP(MD)No.1819 of 2018 & 7325 of 2018

Shantha Jeyakumari

... Petitioner

**Vs.**

M.V.Thomas Alva Edison

... Respondent

**Prayer :** This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 06.09.2017 in I.A.No.631 of 2017 in O.S.No.457 of 2012 passed by the Principal District Munsif Court, Dindigul.

|                |                                 |
|----------------|---------------------------------|
| For Petitioner | : Mr.S.Anand Chandrasekar       |
|                | for M/s.Sarvabhauman Associates |
| For Respondent | : Mr.H.lakshmi Shankar          |

**COMMON ORDER**

The revision petitioner is the defendant in O.S No.457 of 2012 on the file of the Principal District Munsif Court, Dindigul. The suit was filed by the respondent claiming the relief of declaration and permanent injunction and mandatory injunction. The defendant/revision petitioner filed a petition for appointment of the advocate commissioner. The same was allowed as early as in the year 2012. But then, due to various reasons, the report came to be filed only in the year 2016. The revision petitioner has filed her objection to the said report of the advocate commissioner. Thereafter, the revision petitioner filed I.A.No.631 of 2017 for appointing another advocate commissioner. The said I.A was dismissed by order dated 06.09.2017. The correctness of the said order is under challenge in this Civil Revision Petition.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the respondent wanted this Court to sustain the order passed by the learned Principal District Munsif, Dindigul. He pointed out that the revision petitioner has been adopting an obstructionist approach. It was the defendant who filed I.A.No.645 of 2012 for appointing an Advocate Commissioner. But then, the report itself came to be filed only four years later and that was because of non co-operation by the revision petitioner. He also contended that the grounds now set out in this Civil Revision Petition are not sufficient to appoint one more Advocate Commissioner.



4.This Court is of the view that the interlocutory application filed by the revision petitioner before the Court below can very well be allowed. It is not in dispute that during the intervening period, the High Ways Department had taken action to remove the encroachments and also planted survey stones. They also marked the end of the high way portion. Undertaking a second exercise would only further the cause of justice. However, the court below had proceeded on the premise that the revision petitioner wanted only physical features of the property to be noted and that the revision petitioner has not sought for measuring of the property in question.

5.This observation of the court below appears to have been made because in the prayer portion that alone was sought. But, on a reading of the affidavit as a whole it is seen that the revision petitioner has also sought measurement of the property by taking the assistance of the high way engineer as well as the surveyor. In Paragraph No.6 of the affidavit filed in support of I.A.No.631 of 2017, the request for measurement has been sought. The Court below has not considered the said averment.

6.In this view of the matter, the order impugned in this Civil Revision Petition is set aside. The revision petition is allowed. The court below shall appoint an Advocate Commissioner who is presently practicing in the Dindigul Court and set out the terms of the warrant appropriately. It is needless to mention that the Advocate Commissioner will have to be assisted by a high way department engineer and also a surveyor. The entire expenditure shall be borne by the revision petitioner alone.

7.At this stage, the learned counsel for the respondent expressed his apprehension that there will be another delay of four more years. Therefore, this Court directs that the entire exercise shall be concluded within a period of two months from the date of receipt of a copy of this order. Since the suit itself is of the year 2012, after the receipt of the report of the Advocate Commissioner, the entire suit proceedings shall be concluded within a period of three months thereafter.

8.With this direction, this Civil Revision Petition is allowed.

Sd/-  
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-II)



To

The Principal District Munsif Court,  
Dindigul.

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+1cc to M/s.Sarvabhauman Associates, Sr.No.78537

+1cc to Mr.H.lakshmi Shankar, Advocate Sr.No.78496

SKM

VB/SKN/SAR2/10.09.2018/3P/4C

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