



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.01.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.87 of 2018 (PD)
and
C.M.P (MD) No.364 of 2018

Malaiyital ... Petitioner/Petitioner/Plaintiff

Vs.

Muthukkuri ... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to pass an order setting aside the fair and executable order dated 20.11.2017 passed in I.A.No.195 of 2017 in O.S.No.18 of 2013 on the file of District Munsif cum Judicial Magistrate Court, Rameshwaram and allow the same.

For Petitioner : Mr.T.R.Jeyapalam

ORDER

This Civil Revision Petition has been filed challenging the order dated 20.11.2017 made in I.A.No.195 of 2017 in O.S.No.18 of 2013, on the file of the District Munsif cum Judicial Magistrate Court, Rameshwaram.

2. Heard the learned Counsel for the petitioner and perused the materials available on record. Notice to the respondent is dispensed with.

3. The petitioner /plaintiff has filed a suit in O.S.No.18 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Rameshwaram, for declaration and for permanent injunction. During the pendency of the suit, she has filed an interlocutory application in I.A.No.195 of 2017 under Order XXVI Rule 9 and Section 151 C.P.C., to appoint an Advocate Commissioner to inspect the suit property and for other reliefs.

4. The respondent/defendant, before the lower Court, through his counter affidavit denied all the averments made in the affidavit. He has contended that the Advocate Commissioner shall not be appointed to gather evidence. It is also the specific contention of the respondent/defendant that after completing the service by courts, the case was posted for arguments. At that stage, the petitioner has filed the present application in order to drag on the proceedings and hence prayed for dismissal.



5. The Court below, by an order dated 20.11.2017, dismissed the petition. Aggrieved by the said order, the petitioner herein has preferred the above Civil Revision Petition.

6. On a perusal of the records, it could be seen that the suit was posted for arguments of either side. At that time, the petitioner has filed the present application seeking to appoint an Advocate Commissioner to show the pathway. The learned Trial Judge, has dismissed the application, by concluding that in order to drag on the proceedings the petitioner has filed this application. Whether there is a path way or not, it has to be decided only at the stage of trial and at the time of judgment.

7. Under such circumstances, it could be seen that the petition has been filed only to drag on the proceedings. Accordingly, this Court is of the view that there is no illegality or irregularity in the order passed by the trial Court. Hence, this Court does not find any merits in this petition.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
District Munsif cum Judicial Magistrate Court,
Rameshwaram.

+1cc to M/S.T.R.Jeyapalam, Advocate SR.No. 42808

C.R.P (MD) No.87 of 2018 (PD)

and

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18.01.2018

RM

JM/SV MMS/SAR 1/31.01.2018/2P/3C