



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) No.850 of 2018 (PD)
and
CMP (MD) No.3711 of 2018

Rajavel ... Petitioner

Vs.

1.Raja Krishnamoorthy

2.Rajaram

3.Rajammal ... Respondents

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A No.304 of 2017 in O.S No.131 of 2010 on the file of the Principal Sub Court, Madurai.

For Petitioner : Mr.N.Tamilmani

For Respondents : Mr.Raja Krishamoorthy - R1
(Party in person)

Mr.Saravanathiruvan for R2

R3 - No appearance

ORDER

The petitioner herein is the second defendant in OS No.131 of 2010 on the file of the Principal Sub Court, Madurai. The suit has been filed for the relief of declaration and consequential injunction with regard to a path way. Advocate Commissioner was appointed and he has since been submitted his report. To scrap the same, the revision petitioner filed I.A No.304 of 2017. The revision petitioner had also made some allegations against the Advocate Commissioner. The court below dismissed the said I.A No.304 of 2017 by order dated 23.01.2018. Questioning the correctness of the said order, this Civil Revision Petition has been filed.

2.Heard the learned counsel on either side.

<https://hcservices.ecourts.gov.in/hcservices/>

3.It is admitted by the learned counsel for the revision petitioner that the Advocate Commissioner has not yet been



examined. Order 26 Rule 10 of C.P.C reads as follows :

"10. Procedure of Commissioner

(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and deposition to be evidence in suit. Commissioner may be examined in person—The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to suit may examine the Commissioner personally in open Court touching any part of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit."

4. In this case, the allegations have been made against the Advocate Commissioner. An Advocate Commissioner is an officer of the court. The report will form part of the record. Therefore, in the very nature of things, without formally examining the Advocate Commissioner, an application for scrapping of his report could not have been filed in this case. The said I.A was prematurely filed. This Court sustains the order passed by the court below for this reason.

5. This Civil Revision Petition is dismissed. However, the revision petitioner is given liberty to renew his application for scrapping of the Advocate Commissioner's report after examining him. As and when such an application is filed, the same shall be disposed of in accordance with law by the court below totally uninfluenced by any of the observations made in this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (WRIT)

/True Copy/

Sub Assistant Registrar



Skm

To

1.The Principal Subordinate Judge,
Madurai.

+1cc to Mr.N.Tamilmani, Advocate in SR No.80041

CRP (MD) No.850 of 2018 (PD)

and

CMP (MD) No.3711 of 2018

NM/RP/SAR 4/25.09.18/3P/3C