



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 04.09.2018

DELIVERED ON : 19.09.2018
CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1265 of 2015

and

M.P. (MD) No.1 of 2015

Parthasarathy .. Petitioner
Vs.
Chinnasamy .. Respondent

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the order dated 17.03.2005 in I.A.No.1204 of 2013 in O.S.No.70 of 2013 on the file of the District Munsif Court, Thanjavur.

For Petitioner : Mr.R.Maheswaran
For Respondent : Mr.S.Venkatesan

ORDER

Heard Mr.R.Maheswaran, learned counsel appearing for the petitioner and Mr.S.Venkatesan, learned counsel appearing for the respondent.

2.This petition has been filed to set aside the order dated 17.03.2005 in I.A.No.1204 of 2013 in O.S.No.70 of 2013 on the file of the District Munsif Court, Thanjavur.

3.The petitioner filed the petition in I.A.No.1204 of 2013 for appointment of an Advocate Commissioner and the petition was dismissed by the trial Court. Against the dismissal order, the petitioner has filed the present petition.

4.On the side of the petitioner, it is stated that the petitioner is in possession of the suit property and the respondent is the owner of the property which is situated on the southern side of the suit property and to prove the possession of the petitioner and to identify the suit property, appointment of an Advocate Commissioner is necessary. It is further stated that the learned District Munsif erred in deciding basis that the petitioner has filed the petition for appointment of the Commissioner for the purpose of ascertaining the possession but the actually the petition was filed to note down the physical features of the suit property and he is ready to prove the possession through documents and through evidence and prayed the petition to be allowed.



5. On the side of the respondent, it is stated that in the injunction suit, it is the duty of the petitioner to prove the possession through independent witness and by way of filing documents, the petitioner is not entitled to seek for appointment of the Commissioner to prove the possession and prayed this petition to be dismissed.

6. On the side of the petitioner, it is stated that the petition is only for identification of the property and for noting down the physical features of the property. The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of B. Amutha v. Ananthi Sankara Narayanan reported in (2016) 8 MLJ 368, which reads as follows:

"Appointment of Advocate Commissioner maintainable even in suit filed by petitioner/plaintiff for permanent injunction-order passed by Principal District Munsif Court set aside-Direction issued to trial Court for appointing Advocate Commissioner"

6. Records perused. The suit was filed for permanent injunction. The respondent is said to be the adjacent land owner. In this circumstances, noting down the physical features may be of the help to the trial Court to come to a conclusion. Hence, the Advocate Commissioner is to be appointed to visit the suit property with the help of the Surveyor and to file a report and plan. The Commissioner is to be directed not to go into the details as to the possession. This Civil Revision Petition is allowed and the lower Court is directed to appoint the Commissioner as per the procedure and with the above conditions. No Costs.

Sd/-

Assistant Registrar(w)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The District Judge, Tirunelveli.

+1cc to Mr. R. Maheswaran, Advocate Sr.No. 85492

MRN

VB/PM/SAR1/04.10.2018/2P/3C