



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.03.2018

PRONOUNCED ON : 17.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD)Nos.999 and 1000 of 2014(PD)
and

CMP(MD)Nos.1 and 2 of 2014 in C.R.P.(MD).No.999 of 2014

Savari Ammal ... Petitioner in both CRPs/
Petitioner / 1st defendant

vs.

1.Kulanthai Therasa

2.Saratha @ Maria Nakshatharam

3.Raj @ Adaikkalaraj

4.John @ John Selvaraj

5.Elizabeth Rani

6.Margaret

7.Stephen ... Respondents in both CRPs/
respondents / plaintiffs

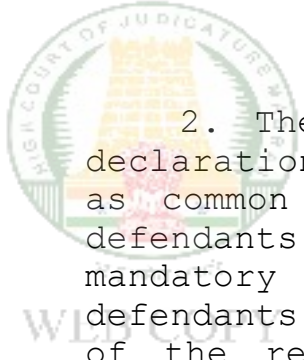
COMMON PRAYER: Petitions filed under Article 227 of the Constitution of India, against the common order, dated 03.01.2014 passed in I.A.Nos.53 and 54 of 2013 in O.S.No.749 of 2012 by the learned I-Additional District Munsif, Tiruchirappalli.

For Petitioner in
both CRPs : Mr.S.Natesh Raja

For respondents 1, 3 & 4
in both CRPS : Mr.P.Thiagarajan
R2,R5,R6 & R7 dismissed vide Court order dated 14.06.2016

COMMON ORDER

Both the civil revision petitions have been filed against the order dismissing the petitions filed for appointment of fresh Commissioner and to scrap the earlier Advocate Commissioner's report.



2. The suit was filed by the respondents / plaintiffs for declaration of the suit pathway shown as PQRG in the plaint plan as common pathway and for permanent injunction restraining the defendants from interfering with the plaintiffs' right and for mandatory injunction for removing the obstruction made by the defendants in the said common pathway. While so, at the request of the respondents / plaintiffs, an Advocate Commissioner was appointed by the trial Court in I.A.No.486 of 2012. The petitioner / 1st defendant has also filed her objections against the report of the Advocate Commissioner. Thereafter, the petitioner / 1st defendant has filed I.A.Nos.53 and 54 of 2013 seeking to appoint fresh Advocate Commissioner and to scrap earlier Advocate Commissioner's report. The Court below has dismissed both the petitions holding that there is no valid ground raised to appoint fresh Advocate Commissioner and to scrap the earlier Advocate Commissioner's report. However, considering the grievance of the petitioner / 1st defendant, the Court below has reissued warrant to the same Commissioner for inspection of the suit property again, after giving notices to both sides and to file a detailed report and plan with the help of a qualified surveyor.

3. The learned counsel for the petitioner / 1st defendant would submit that the Advocate Commissioner had not properly noted down the physical features of the suit property and the measurement given in the plaint was incorrect and he had not measured the suit property with the help of Taluk Surveyor and therefore, the petitioner / 1st defendant has filed the said interim applications, but the Court below has erroneously dismissed both the petitions and reissued the warrant to the very same Commissioner to again inspect and measure the suit property with the help of the Taluk Surveyor and therefore, the order impugned in these petitions may be set aside and the Court below may be directed to issue warrant to a fresh Advocate Commissioner. Thus, he prayed to allow both the civil revision petitions.

4. The learned counsel appearing for the respondents 1, 3 and 4 / plaintiffs 1, 3 and 4 would submit that the Advocate Commissioner has rightly inspected and measured the suit property and the petitioner / 1st defendant failed to point out any specific lapse on the part of the Commissioner in noting down the features of the suit property. He would further submit that the petitioner / 1st defendant has already filed her objections against the report of the Advocate Commissioner and hence, these petitions are not maintainable and that the Court below has rightly dismissed both the said applications and reissued warrant to the same Commissioner. Thus, he prayed to dismiss both the revision petitions.

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

5. Heard the learned counsel appearing for the parties and perused the materials available on record.



6. When an Advocate is appointed as an Advocate Commissioner, he would become an Officer of the Court for the purpose which his appointment was made. Mere a statement that he has not properly measured the property, cannot be a ground for scrapping the report of the earlier Advocate Commissioner and appointing a fresh Advocate Commissioner. Unless it is shown to the satisfaction of the Court that the Advocate Commissioner has acted in partial and vindictive manner, the report of the Commissioner cannot be scrapped.

7. Here, in this case, the petitioner / 1st defendant has not averred any specific allegation against the Advocate Commissioner. A perusal of the report of the Commissioner does not disclose any *mala fide* or vindictive act against petitioner / 1st defendant. The grounds raised by the petitioner / 1st defendant has also been dealt with in detail by the Court below. This Court does not find any reason to interfere with the order passed by the Court below. It is also seen that as the measurement has been made in different manner, the Court below has reissued the warrant to the same Commissioner to measure the property. If the petitioner / 1st defendant has any objection to the report to be submitted by the Advocate Commissioner, she can very well file her objection before the Court below. After the examination of the Commissioner, the Court below shall consider the objections, if any, against the report of the Advocate Commissioner and if necessary, may reissue the warrant to the same Commissioner or appoint a fresh Advocate Commissioner.

8. With the above observation, both the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

The First Additional District Munsif,
Tiruchirappalli.

+1cc to Mr.P.Thiagarajan, Advocate, SR.No. 62359

+1cc to Mr.S.NateshRaja, Advocate, SR.No. 61606

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17.04.2018