



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.10.2018

Delivered On : 29.10. 2018

CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD) (MD) No.97 of 2015

and

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

K.P.Jeyapaul Asan ... Petitioner / Respondent / Plaintiff

Vs.

1.Kunjupillai

2.Rethinasamy

3.Rajeswari

4.Anbalagi

... Respondents / Respondents/ Defendants

Prayer : This revision petition is filed under Article 227 of Constitution of India, to set aside the Fair Order and Decreetal Order passed in I.A.No.868 of 2014 in O.S.No.426 of 2010 on the file of the Principal District Munsif Court, Padmanabhapuram, dated 05.12.2014.

For Petitioner

: Mr.C.Sankar Prakash

For R-1

: Mr.C.K.M.Appaji

For R-2

: No appearance

R-3 and R-4

: Given up

O R D E R

This petition is filed against the order passed in I.A.No.868 of 2014 in O.S.No.426 of 2010 on the file of the learned Principal District Munsif, Padmanabhapuram, dated 05.12.2014.

2.The petitioner is the plaintiff, respondents are the defendants in the suit in O.S.No.426 of 2010. The suit was filed for a prayer of declaration and for permanent injunction and for a mandatory injunction, directing the defendants to remove the encroachments made on the pathway. The first defendant filed a petition in I.A.No.868 of 2014 for reissuing the Commissioner Warrant. The petition was allowed by the learned Principal District Munsif, Padmanabhapuram. Against that order, the petitioner has filed this Civil Revision Petition.

3.The first respondent herein has filed the petition, <https://hservices.products.gov.in/hservices/> stating that the Advocate Commissioner has visited the suit property and has filed a report and plan, but, the first



respondent was not able to file a memo before the Advocate Commissioner. The plaintiff has filed two amendment petitions and carried out amendments twice and this amendments necessitate the respondent to file a petition for re-issuance of the Commissioner Warrant and it is necessary that the Commissioner to re-visit the property and to file a fresh report and plan.

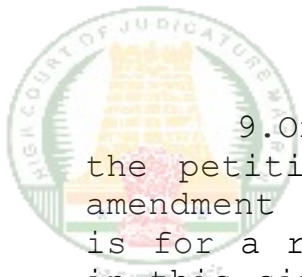
4. On the side of the petitioner, it is stated that as per order passed in I.A.No.879 of 2010, an Advocate Commissioner by name Mr.C.K.Britto was appointed, he has visited the suit property and filed a report. When the Commissioner visited the suit property, the respondent and his Advocate were available there. They have not filed any memo. The petitioner have amended the plan only with regard to resurvey number and boundaries. No other informations are included in the plaint. Hence, there is no necessity for reissuing the warrant.

5. On the side of the petitioner, it is stated that the amendment is only with regard to old Survey Number and New Survey Number. Now, there is no necessity for re-issuance of the Commissioner Warrant. Already Commissioner has visited the suit property and filed his report and plan. The house of the plaintiff has already been demolished by the defendant. Hence, there is no question of re-visit of the Commissioner to note down the distance between the house of the plaintiff and the pathway. Even in the Commissioner Report it is clearly stated that the house of the plaintiff, is demolished. Another point raised by the first respondent is that the Commissioner has to note down the age of the Pit (Parai Kundru) situated in the property of the first defendant. The Advocate Commissioner could not fix the age of the Pit.

6. On the side of the petitioner, it is further stated that the first respondent has filed a memo for revisit of the Commissioner, to fix the age of the tank and that the Advocate Commissioner cannot find out the age of the tank and there is no necessity for Commissioner to revisit the suit property.

7. On the side of the petitioner, a judgment of this Court reported in **(2013) 5 CTC 599** in **Banu @ Banumathi and others Vs. Muniammal** is cited, wherein, it is decided that the Advocate Commissioner is not an expert to give finding with regard to age of a building.

8. On the side of the petitioner, another judgment of this Court reported in **(2009) 2 CTC 205** in **Anna Sudha Devi Vs. P.George Samuel** is cited, wherein, it is decided that a Second Advocate Commissioner cannot be appointed without setting aside the report of the First Advocate Commissioner.



9. On the side of the respondents, it is further stated that the petitioner has admitted that the petitioner has carried out amendment in the Survey Numbers and in the Boundaries. The suit is for a right over the pathway. Trial has not been commenced and in this situation, revisit by the Commissioner is necessary.

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10. The suit is for declaring the right over the path way. The petitioner is the plaintiff in the suit. Admittedly the petitioner has carried out amendments with regard to the Survey Numbers and the Boundaries in the suit properties. The Contention of the petitioner is that the Advocate Commissioner is not an expert to find out the age of the Pit and the age of the Tank. This contention is sustainable. At the same time, as the petitioner has carried out some amendments in the suit properties regarding to the Boundaries and Survey Number this changes have to be noted down by the Commissioner. The trial of the case has not been commenced so far. No prejudice will be caused to the petitioner in revisiting of the suit property.

11. Hence, there is no question of appointment of a Second Commissioner, there is no necessity to scrap the earlier Commissioner's Report and Plan.

12. Hence, it is decided that re-issuance of the warrant to the same Advocate Commissioner to re-visit the suit property once again and to note down the physical features in the light of the amendments in the Boundaries and in the survey numbers is necessary. An additional report and an additional plan may be useful to decide the matter in issue. There is nothing to interfere with the order passed by the trial Court.

13. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Principal District Munsif,
Padmanabhapuram.

+1cc to Mr.C.Sankar Prakash, Advocate Sr.No.92759

LS

VB/SV/SAR2/20.11.2018/3P/3C