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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP PD (MD)No.119 of 2016

and

CMP(MD)No.517 of 2016

Arullingam

... Petitioner

Vs.

Ganapathy

... Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.06.2015 passed in I.A No.252 of 2014 in A.S No.15 of 2013 on the file of the Sub Court, Valliyoor.

For Petitioner

: Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

For Respondent

: Ms.P.Jessy Jeeva Priya
for Mr.G.Aravindan

ORDER

Heard the learned counsel on either side.

2.The respondent herein filed OS No.152 of 2008 on the file of the learned Principal District Munsif Court, Valliyoor seeking the relief of declaration and permanent injunction. The revision petitioner herein filed his written submission contesting the very identity of the suit property. According to the defendant, the Survey Number is 762/09. But, in the suit schedule, the survey number has been given as 762/14. Thus, there are issues regarding the identity of the suit property. The revision petitioner filed I.A No.1130 of 2011 before the court below for appointment of an Advocate Commissioner. The same was dismissed on merits. The suit was decreed on 24.01.2013. Questioning the correctness of the Trial Court's verdict, the revision petitioner filed A.S No.15 of 2013 before the Sub Court, Valliyoor. In the memorandum of grounds of appeal, the dismissal of I.A No.1130 of 2011 has been made as a ground of attack. The revision petitioner also filed I.A No.252 of 2014 in A.S No.15 of 2013 seeking appointment of an Advocate Commissioner. Citing dismissal of the very same application by the trial court, the appellate court also dismissed the same. The correctness of the said order is under challenge in this civil revision petition.

3.This court is of the view that dismissal of the application for appointment of an Advocate Commissioner by the trial court on merits, will not be an impediment for the appellate court to



consider the application for appointment of an Advocate Commissioner afresh and in accordance with law. In this case, the identity of the suit property is in dispute. Therefore, interest of justice will be better served by allowing the application and not by dismissing the same.

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4. In this view of the matter, the order impugned in this civil revision petition is set aside. Accordingly, this Civil Revision Petition is allowed. The process regarding appointment of the Advocate Commissioner, obtaining his report, filing of objections and examination of the advocate commissioner shall be concluded within a period of within a period of two months from the date of receipt of a copy of this order. The appeal itself shall also be disposed of within a period of one month thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Sub Court,Valliyoor.

+1cc to Mr.D.Nallathambi, Advocate Sr.No.80360

+1cc to Ms.P.Jessy Jeeva Priya, Advocate Sr.No.80487

SKM

VB/SKN/SAR1/27.09.2018/2P/4C

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