



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD)No.2008 of 2016

and

C.M.P. (MD) .No.9438 of 2016

M.P.Vinayagam

.. Petitioner/Respondent/
Plaintiff

vs.

T.Gomu

.. Respondent / Petitioner /
Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.06.2016 passed in I.A.No.665 of 2015 in O.S.No.104 of 2009 on the file of the Additional District Munsif Court, Ambasamudram.

For Petitioner : Mr.V.Sasikumar
For Respondent : Mr.R.J.Karthick

ORDER

The revision petitioner filed O.S.No.14 of 2009 before the Vacation Court, Tirunelveli. It was subsequently transferred and re-numbered as O.S.No.104 of 2009, on the file of the learned Additional District Munsif, Ambasamudram. The suit is one for declaration, permanent injunction as well as mandatory injunction. An advocate commissioner was appointed in the year 2011. His report was submitted only in 2015. The defendant, therefore applied for scrapping of the said report and for appointing a new advocate commissioner. The defendant also wanted that the new advocate commissioner should take the aid of the surveyor and measure the property. The Court below by order, dated 13.06.2016, allowed I.A.No.665 of 2015 in O.S.No.104 of 2009, filed by the defendant herein. The correctness of the said order is questioned in this civil revision petition.

2. Heard the learned counsel for the revision petitioner as well as the learned counsel for the respondent.

3. The learned counsel for the revision petitioner submitted that an advocate commissioner's report cannot be scrapped without recording reasons. In this regard, he placed reliance on the decision reported in **2000 (1) LW 893**. He pointed out that in this case, no reason has been assigned for allowing I.A.No.665 of 2015.



4. It is submitted by both parties that the advocate commissioner was appointed in the year 2011 and the report was filed four years later. The advocate commissioner had, in the meanwhile, stopped practising. Therefore, in the very nature of things, such a report deserves to be scrapped. This is a suit for declaration and injunction. The construction said to have been put up by the defendant is sought to be removed. Therefore, the advocate commissioner should have taken the aid of the surveyor. Since the earlier advocate commissioner did not take the aid of the surveyor, the said report is liable to be faulted on that ground also. Therefore, the order passed by the Court below is sustained.

5. But the matter cannot rest there. The learned counsel for the revision petitioner pointed out that the newly appointed advocate commissioner happens to be the erstwhile junior of the learned counsel for the defendant. Therefore, the Court below is directed to appoint some other advocate commissioner.

6. With these directions, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Additional District Munsif,
Ambasamudram.
2. The Section Officer, (2copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.V.Sasikumar, Advocate Sr.No.78495

+1cc to Mr.R.J.Karthick, Advocate Sr.No.78462

PJL

VB/PM/SAR1/05.10.2018/2P/6C