



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No. 2252 of 2016

and

C.M.P (MD) No. 10450 of 2016

WEB COPY

Chellathangam
W/o. Augustin Joseph

... Revision Petitioner/Petitioner/
Defendant

Vs.

1. Paul Prabin Jesintha Rani
2. Chellathangam
S/o. Muthaian

... Respondents/Respondents/
Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and Decreetal Order, dated 16.09.2016 made in I.A.No.582 of 2016 in O.S.No.75 of 2010, on the file of Principal District Munsif, Padmanabhapuram and allow the Civil Revision Petition.

For Petitioner : Mr.V.M.Balamohan Thambi
For R1 : No appearance
For R2 : Mr.R.J.Karthick

O R D E R

The petitioner has filed this Civil Revision Petition to set aside the order and Decreetal Order, dated 16.09.2016 made in I.A.No.582 of 2016 in O.S.No.75 of 2010, on the file of Principal District Munsif, Padmanabhapuram and allow the Civil Revision Petition.

2. The petitioner is the defendant and the respondents are the plaintiffs in a suit in O.S.No.75 of 2010. The respondents have filed the above suit before the Principal District Munsif, Padmanabhapuram for declaration, Mandatory injunction and permanent injunction. Pending suit, the petitioner filed I.A.No.582 of 2016 for re-issuance of commissioner's warrant to ascertain the physical features of the property. Admittedly, the trial Court has appointed an Advocate Commissioner and he has also visited the property on 28.12.2010 and filed a report on 10.06.2011. Admittedly, the petitioner has filed this application after a long period of 5 years, in the year 2015. The present application has been filed on the ground that at the time of the commissioner's visit, the petitioner's previous Advocate has failed to give a memo to the commissioner to note the points in his side, which are highly necessary in this case. The petitioner also stated that now, he has appointed a new counsel by way of change of vakalat and therefore, it is required to file an application for re-issuance of warrant to the very same commissioner.



3. Admittedly, the commissioner was appointed in the year 2010 and report was filed on 10.06.2011 and only for the purpose of re-issuance of warrant, the suit is pending for more than 6 years before the trial Court. Since the petitioner seeks for re-issuance of warrant to the very same counsel in order to note down the physical features, no prejudice will be caused to the respondent. Since the original report filed by the commissioner will not be changed at any reason and it is only a direction to the Commissioner once again to visit the suit property and to file an additional report.

4. In the result,

(a) the Civil Revision Petition is allowed by setting aside the order passed by the Principal District Munsif, Padmanabhapuram in I.A.No.582 of 2016 in O.S.No.75 of 2010, dated 16.09.2016.

(b) The learned Principal District Munsif, Padmanabhapuram is directed to pass an order by re-issuing the warrant by appointing the very same Advocate Commissioner within a period of one week from the date of receipt of a copy of this order and by directing the Advocate Commissioner to re-visit the suit property and to file a report within a period of three weeks thereafter and both parties are directed to co-operate for an early inspection by the Advocate Commissioner and to file a report within a time frame stipulated by this Court.

(c) After filing the report by the Advocate Commissioner on his inspection, both the parties are permitted to file their objections, if any, within a period of two weeks thereafter, to the Advocate Commissioner's report based on the inspection.

(d) Based on the report filed by the Advocate Commissioner, the Trial Court is directed to dispose of the suit in O.S.No.75 of 2010 within a period of four months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar (CS-III)

To
The Principal District Munsif,
Padmanabhapuram.

+1CC to Mr.V.M.Balamohan Thampi Advocate in SR.No.75285.

+1CC to Mr.RJ.Karthick, Advocate in SR.No.75418.

AM

DS RSK SAR -3 :27.06.2018: 2P/4C

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