



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD)No.1496 of 2018

and

C.M.P. (MD) .No.6519 of 2018

WEB COPY

1.Smt.Beena Kumari

2.Balakrishna Nair

3.Shanu Balan

...Petitioners/Petitioners/ Defendants

Vs.

A.K.Baby

...Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.No.553 of 2017 in O.S.no.205 of 2016 on the file of the learned Principal District Munsif, Kuzhithurai, dated 21.04.2018.

For Petitioners

: Mr.E.K.John Victor Ellis

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order made in I.A.No.553 of 2017 in O.S.No.205 of 2016 on the file of the learned Principal District Munsif, Kuzhithurai, dated 21.04.2018.

2.The petitioners, who are the defendants in the suit in O.S.No.205 of 2016, has filed an application in I.A.No.553 of 2017 to set aside and to scrap the Commissioner's Report and plan in I.A.No.291 of 2017 in the above suit. Since, the said application was dismissed by the learned Judge on the ground that the petitioners are having every liberty to prove the falsity, if any, on the Commissioner's Report as alleged by the petitioner through adducing evidence, the trial Court is not inclined to allow this petition. Hence the petition was dismissed. Against which, the present Civil Revision Petition has been filed.

3.Heard the learned counsel for the petitioners and perused the materials available on record.

4.Without issuing notice to the respondent, the trial Court has passed the above said order and the petitioner has also filed an objection on the Commissioner's Report.

5.Admittedly, the petitioners have filed an objection to the Commissioner's Report and the same is pending before the learned Judge. Once the petitioners have filed an application for scraping the Commissioner's report, it is duty bound for the Court



to consider the petitioners' objection along with the application filed for scraping the Commissioner's report and thereafter, to pass appropriate orders. Therefore, I am inclined to pass the following order:

The Civil Revision Petition is allowed by setting aside the order 21.04.2018 passed in I.A.No.553 of 2017 and the matter is remitted back to the learned Principal District Munsif, Kuzhithurai. The learned Principal District Munsif, Kuzhithurai, is directed to consider the objection filed by both parties along with the petition filed in I.A.No.291 of 2017 for scraping the Commissioner's report by giving notice to both parties and to pass appropriate order, within a period of four weeks from the date of receipt of a copy of this order. If the trial Court has come to the conclusion that the objections were accepted by the learned Judge, the learned Judge is directed to re-issue the warrant to the same Commissioner for further inspection in the presence of both parties and to file a report and plan regarding the same. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Principal District Munsif,
Kuzhithurai.
3. The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.E.K.John Victor Ellis, Advocate Sr.No.74055

NS

VB/KAK/SAR3/16.08.2018/2P/5C

C.R.P. (NPD) (MD) No.1496 of 2018
20.07.2018