



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2018

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) .Nos.262 and 263 of 2016
and
C.M.P. (MD) .Nos.1071 and 1072 of 2016

M.Arjunan ...Petitioner/Respondent/Defendant
in both cases

vs

H.Shajahan ...Respondent/Petitioner/Plaintiff
in both cases

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 15.10.2015 passed in I.A.Nos.381 and 382 of 2014 in O.S.No.426 of 2008 on the file of the I Additional District Munsif Court, Kuzhithurai.

For Petitioner: Mr.J.Anandhavalli

For Respondent: Mr.V.M.Balamohanthambi

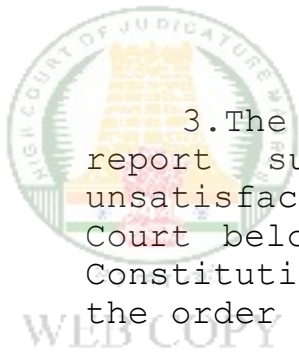
(In both CRPs)

ORDER

The defendant in O.S.No.426 of 2008 on the file of the First Additional District Munsif, Kuzhithurai is the revision petitioner in both the Civil Revision Petitions. The suit is for recovery of possession. In the said suit, the revision petitioner filed I.A.No.519/13 for appointment of an Advocate Commissioner. The said I.A was allowed. An Advocate Commissioner was appointed and she filed a report on 29.11.2013. The plaintiff filed his objection in response thereto. The Advocate Commissioner was also examined. Thereafter, I.A.No.381 of 2014 was filed for reopening the case and I.A.No.382 of 2014 was filed for scrapping Commissioner's report and plan filed on 29.11.2013 and for appointment of a fresh Advocate Commissioner. Both the I.As were allowed on 15.10.2015. Challenging the same, the present Civil Revision Petitions have been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Heard the learned counsel appearing on either side.



3.The Court below has given a specific finding that the report submitted by the Advocate Commissioner is totally unsatisfactory. A number of reasons have also been given by the Court below. While exercising powers under Section 227 of the Constitution of India, I do not find deem it fit to interfere with the order impugned.

4.However, while allowing I.A.No.382/14, the Court below has directed the Commissioner to measure the suit property along with the qualified Taluk Surveyor in accordance with the re-survey plan and Ex.A.1-Sale deed. It is to be noted that the plaintiff did not ask for appointment of an Advocate Commissioner. It was the defendant, who filed I.A.No.519 of 2013 for appointing the Advocate Commissioner to ascertain the following facts:

"1.Ascertain and report the condition of the plaint schedule building.

2.Ascertain and report whether the plaint schedule building is a terraced building or tiled roof building.

3.Ascertain and report the direction in which the plaint schedule building is falling.

4.To prepare a plan of the plaint schedule building.

5.To prepare a plan and note the physical features of the property in which the plaint schedule building is situated.

6.Ascertain and report such other matters which the defendant requires at the spot in writing."

5.Therefore, the Court below ought not to have issued a direction for measurement of the property in question with reference to Ex.A.1-sale deed. This portion of the impugned order passed in I.A.No.382/14 is set aside. In all other aspects, the orders in question stand confirmed.

6.Accordingly, C.R.P.(MD).No.262 of 2016 is dismissed and C.R.P.(MD).No.263 of 2016 is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL-SIDE)

// True Copy //

Sub Assistant Registrar(CS-II)



To

The I Additional District Munsif Court,
Kuzhithurai.

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+ 2 CC TO MR.J.Anandhavalli, ADVOCATE IN SR NO.82363 & 82364
+ 1 CC TO MR.V.M.BALAMOZHANTHAMI, ADVOCATE IN SR NO.82563

VS

BU/SKN/SAR-II : 01.10.2018 : 3P/5C

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