



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP(MD)Nos.1730 & 1731 of 2018 (PD)

and

CMP(MD)No.7409 of 2018

Gunaseeli

... Petitioner/Petitioner/Appellant/Plaintiff
in both cases

Vs.

Pushpam

... Respondent/Respondent/Respondent/Defendant
in both cases

Common Prayer : Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.01.2018 passed in I.A Nos.272 & 273 of 2017 in A.S No.9 of 2012 on the file of the learned Sub Court, Valliyoor.

In both cases :

For Petitioner : Mr.V.Meenakshisundaram
for Mr.D.Nallathambi

For Respondent : No appearance

COMMON ORDER

The plaintiff in O.S No.62 of 2007 on the file of the Additional District Munsif Court, Valliyoor is the revision petitioner herein. It is a suit for permanent injunction and mandatory injunction. The said suit was dismissed. Questioning the same, the petitioner herein filed A.S No.9 of 2012 before the Sub Court, Valliyoor. In the appeal proceedings, the revision petitioner took out two applications. One for appointing an Advocate Commissioner and the other for amending the plaint. Both the applications were dismissed. Challenging the same, these two revision petitions have been filed before this Court.

2. Though the respondent has been served and her name also appears in the cause list, she has not chosen to enter appearance either in person or through counsel.

3. The learned counsel appearing for the revision petitioner pointed out that the I.As were dismissed for the reason that they had been taken out at the appellate stage but they were not filed along with appeal grounds. The learned counsel for the petitioner took me through the Judgment of the Trial Court and it is seen there from that the Advocate Commissioner's report is not complete. It does not contain the details. However, it reports that some offending constructions have been put up. Secondly, the proposed amendment merely carves out of the second schedule and does not go beyond the original suit schedule.



4. Therefore, I am of the view that both the interlocutory applications deserve to be allowed. The appellant merely wants re-issuance of the warrant to the very same advocate commissioner who conducted the original inspection. Even at the appellate stage, an application for appointing an Advocate Commissioner can very well be made. The said application cannot be thrown out merely on the ground that it was not filed along with the grounds of appeal. The reasons given by the court below are unsustainable in law.

5. In this view of the matter, the orders impugned in these civil revision petitions are set aside. Both these civil revision petitions stand allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Sub Judge,
Valliyoor.

+1CC to Mr.D.Nallathambi, Advocate, SR.No.84140

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