



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.1742 of 2018

and

C.M.P. (MD) No.7528 of 2018

Ramamoorthy

...Petitioner / Petitioner / Plaintiff

-vs-

Gurusamy Pillai

..Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the judgment and decree dated 12.07.2018 made in I.A.No.105 of 2018 in O.S.No.52 of 2011 on the file of the District Munsif cum Judicial Magistrate, Vilathikulam and allow the Civil Revision Petition.

For Petitioner : Mr.V.Sasikumar

For Respondent : Mr.V.Nirmal Kumar

ORDER

The plaintiff in O.S.No.52 of 2011 on the file of the learned District Munsif cum Judicial Magistrate, Vilathikulam is the revision petitioner herein. He filed the said suit seeking relief of declaration and recovery of possession in respect of the second schedule and mandatory injunction in respect of the third schedule. He filed I.A.No.323 of 2011 for appointment of an Advocate Commissioner for locating the property. The said Advocate Commissioner filed his report stating that he is not able to locate the property. Therefore, to scrap the same, the plaintiff filed I.A.No.105 of 2018. The said application was dismissed by order dated 12.07.2018. The correctness of the said order is questioned in the present Civil Revision Petition.

2.Heard the learned counsel on either side.

3.Since the suit is for declaration, recovery of possession and mandatory injunction, the petitioner deserves to be given one more opportunity. The Advocate Commissioner, who was appointed earlier has categorically stated that he is unable to carry out the terms of the warrant. Therefore, the said report has to be scrapped. The



Court below shall appoint a new Commissioner to fulfil the terms of the warrant. The newly appointed Advocate Commissioner can take the assistance of the Government Surveyor and file his report as early as possible.

4. In view of the above, the order impugned in this petition is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

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To:

The District Munsif cum Judicial Magistrate, Vilathikulam

+1cc to Mr.V.Nirmal Kumar, Advocate in SR No.88312

+1cc to Mr.V.Sasi Kumar, Advocate in SR No.88282

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NM/SKN/SAR III/01.11.18/2P/4C