



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) .No.1903 of 2018 and
C.M.P. (MD) No.8253 of 2018

G.Ramalingam

... Petitioner/Petitioner/
Plaintiff

Vs.

1. T.N.K.Balaraman
2. B.Shankaranarayanan @ Pradeep
3. B.Mareeswari

... Respondents/Respondents/
Defendants

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.11.2017 passed in I.A.No.731 of 2017 in O.S.No.76 of 2015 on the file of the learned District Munsif, Virudhunagar, by allowing this Civil Revision petition and to grant such other reliefs that this Court may deem fit and proper in the circumstances of the case.

For Petitioner: M/s.Jessi Jeeva Priya
For Respondent: M/s.Lakshmi Gopinathan,
for M/s.Polax Legal Solutions.

O R D E R

The plaintiff in O.S.No.76 of 2015 on the file of the District Munsif Court, Virudhunagar, is the Revision petitioner herein. The suit is for the reliefs of declaration, permanent injunction and mandatory injunction. In the said suit, the plaintiff filed I.A.No.152 of 2016 for appointing an Advocate Commissioner. The said application was allowed. The Advocate Commissioner submitted his report. Seeking re-issuance of warrant to him, I.A.No.731 of 2017 was filed by the plaintiff. The said application was dismissed by the Court below. Challenging the same, this Civil Revision petition has been filed.

2. Heard the learned counsel on either side.

3. The learned counsel appearing for the Revision petitioner pointed out that the Advocate Commissioner was mandated to measure the property by taking the assistance of a surveyor. The surveyor refused to carry out the measurement as per the survey records. Then the Advocate Commissioner carried out the warrant without



taking assistance of the surveyor. The case of the Revision petitioner is that this has led to some grievous errors in the report. If that be so, as rightly pointed out by the learned counsel appearing for the respondents, without the entire report being scrapped, the question of asking for re-issuance of warrant is not maintainable.

4. Even though the contention raised by the learned counsel appearing for the respondents is technically correct and sound, this Court is of the view that in order to shorten the litigation, the relief sought for in this case can be moulded here itself. Admittedly, the surveyor had refused to carry out the measurement. The Advocate Commissioner carried out the warrant on his own, without the surveyor discharging the role cast on him. This report of the Advocate Commissioner is not in consonance with the terms of the warrant. In this view of the matter, this Court scraps the report submitted by the Advocate Commissioner. The warrant is directed to be re-issued to the very same Advocate Commissioner.

5. The order impugned in this Civil Revision petition is set aside. The Civil Revision petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS-II)

To

The District Munsif,
Virudhunagar.

+ 1 CC TO M/s. POLAX LEGAL SOLUTIONS, IN SR NO.86467
+ 1 CC TO MR.P.JESSI JEEVA PRIYA, ADVOCATE IN SR NO.86551

PMU

BU/VB/PM/SAR-2 : 22.10.2018 : 2P/4C

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and
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