



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) .No.1955 of 2018

and

C.M.P. (MD) No.8608 of 2018

Jansirani

... Petitioner/Respondent/Defendant

Vs.

Ganga

... Respondent/Petitioner/Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and executable order passed in I.A.No.1036 of 2017 in O.S.No.70 of 2016 dated 25.07.2018 in the Court of the District Munsif Court, Ramanathapuram, in Ramanathapuram District.

For petitioner : Mr.J.M.Hassanul Bazari

For Respondent : Mr.J.Madhu

ORDER

The revision petitioner is the defendant in O.S.No.70 of 2016 on the file of the District Munsif Court, Ramanathapuram District. It is a suit for declaration and permanent injunction. Recovery of possession has also been sought in the alternative. In the said suit, the plaintiff took out I.A.No.1036 of 2017 for appointing an advocate commissioner. The Court below by order impugned in this Civil Revision Petition, allowed the said I.A. The correctness of the order is questioned in this Civil Revision Petition.

2.Heard learned counsel on either side.

3.The learned counsel appearing for the revision petitioner / defendant took me through the averments set out in the I.A.No.1036 of 2017. The plaintiff has claimed that it is necessary to measure the property with the help of a surveyor, to find out the ownership over the disputed portion. For that purpose, an advocate commissioner cannot be appointed.

4.In this view of the matter, the order impugned in this Civil Revision Petition is set aside. However, if there is any dispute regarding the identity of the property, an advocate commissioner will have to be appointed.

<https://hcservices.ecourts.gov.in/hcservices/>
5.The learned counsel for the revision petitioner states before this Court that the defendant has not questioned the identity of the suit property.



6. That said submission is recorded. It is open to the plaintiff to cross examine the defendant when she is in the witness box in this regard. If the defendant goes back on the undertaking now given before this Court and disputes the identity of the suit property, it is open to the plaintiff to file an application afresh for appointment of an advocate commissioner. In which event, since there is a dispute regarding the identity of the property, the Court would be justified in appointing an advocate commissioner.

7. With this observation and liberty to the plaintiff, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl. side)

/True Copy/

Sub Assistant Registrar (CS-III)

To:

The District Munsif,
Ramanathapuram.

+1CC to Mr. J. M. Hassanul Bazari, Advocate, SR.No.88733
+1CC to Mr. J. Madhu, Advocate, SR.No.88772

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