

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.3076 of 2010
and
M.P.No.1 of 2010

Ramasamy Konar

...Petitioner

Vs.

1.Maikandanathan
2.Senthilnathan
3.Palani @ Shanmuganathan
4.Ramalingam
5.Srinivasan
6.Rasu
7.Murugesan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.07.2010 made in I.A.No.365 of 2009 in O.S.No.103 of 1999 on the file of the District Munsif cum Judicial Magistrate, Thittakudi.

For Petitioner : Mr.R.Suresh
for M/s.K.M.Vijayan Associates

For Respondents : Mr.T.Sezhian for R1
R2 to R7 not ready in notice

ORDER

Challenging the order passed in I.A.No.365 of 2009 in O.S.No.103 of 1999 on the file of the District Munsif cum Judicial Magistrate, Thittakudi, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.103 of 1999 for declaration, permanent injunction and for recovery of possession. The defendants filed the written statement and are contesting the suit. In the said suit, the plaintiff filed an application seeking for appointment of Advocate Commissioner to note down the physical features. The Trial Court appointed an Advocate Commissioner and the Advocate Commissioner has filed his report before the Trial Court. Thereafter, in the year 2009, the plaintiff filed another application in I.A.No.365 of 2009 seeking for appointment of Advocate Commissioner to note down the physical features with the assistance of a Surveyor. Now, for the second time, the plaintiff is seeking for appointment of an Advocate Commissioner to note down the physical features.

3. It is settled position that the findings of the Advocate Commissioner is not conclusive. The plaintiff has to establish his case only by oral and documentary evidences. It is also settled position that the plaintiff cannot collect evidence through the Advocate Commissioner. When the

WEB COPY

Advocate Commissioner has filed his report, there is no necessity for appointing a new Advocate Commissioner or for re-issuing warrant to the same Commissioner to note down the physical features. The plaintiff could have filed his objections to the Commissioner's report, if he is aggrieved over the same. Taking into consideration of all these aspects, the Trial Court has rightly dismissed the petition.

4. I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

17.10.2019

Index : Yes / No

Internet : Yes

Speaking order / Non Speaking Order
ms

To

The District Munsif cum Judicial Magistrate,
Thittakudi

WEB COPY

C.R.P.(PD).No.3076 of 2010

M.DURAI SWAMY, J.

ms



C.R.P.(PD)No.3076 of 2010
and
M.P.No.1 of 2010

WEB COPY

17.10.2019