

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD) No.2913 of 2013 &

C.M.P.No.1 of 2013

Mrs.Vetriselvi .. Petitioner

Vs.

Mr.K.Marriappan .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and decretal Order passed in I.A.No.1260 of 2011 in O.S.No.30 of 2011 dated 03.09.2012 on the file of the District Munsif Court, Sangagiri.

For Petitioner : Mr.V.V.Sairam

For Respondent : Mr.M.Santharaman

ORDER

This revision petition has been directed as against the Order of dismissal of the application filed for appointment of an Advocate Commissioner to note down the physical features of the suit property.

2. The suit has been laid by the plaintiff for declaration in respect of the 'B' schedule property and also for recovery of possession and for permanent injunction in respect of the 'A' schedule property. It is the case of the plaintiff that the defendant has encroached about two cents of the land adjacent to 'A' schedule property. Therefore, he has laid the suit. The defendant filed the written statement to the effect that the description of the property given by the plaintiff is vague and misleading and the plaintiff has not stated how the defendant has encroached the plaintiff's land and denied the encroachment. During the pendency of the suit, I.A.No.1216 of 2011 has been filed by the plaintiff for appointment of an Advocate Commissioner to note down the physical features of the suit property with the help of the Village Administrative Officer and qualified surveyor. The trial Court has dismissed the application mainly on the ground that an Advocate Commissioner cannot be appointed to gather evidence as to who is in possession of the property.

3. Heard the learned counsel for the revision petitioner and the respondent and perused the Order of the trial Court and the pleadings of the parties.

4. The suit itself has been filed for declaration and recovery of possession and for permanent injunction with respect of the 'A' schedule property. Thereafter, an application has been taken out for appointment of an Advocate

Commissioner to note down the physical features of the suit property with the help of a qualified surveyor to find out any encroachment. The petitioner has not sought appointment of an Advocate Commissioner to prove his possession in the 'A' schedule property. Whereas, the application has been filed only to note down the physical features and find out encroachment, if any, with the help of a qualified surveyor. Therefore, trial Court dismissing the application in the threshold on the ground that an Advocate Commissioner cannot be appointed to gather evidence to find out who is in possession of the property, is without any basis. In fact, noting down the physical features of the suit property with the help of a qualified surveyor will enable the Court to adjudicate the issue between the parties. Therefore, appointment of an Advocate Commissioner to note down the physical features of the 'B' schedule property with the help of a qualified surveyor to find any encroachment will not cause any prejudice to the defendant.

5. Accordingly, this Civil Revision Petition is allowed and the Order of the trial Court in I.A.No.1260 of 2011 in O.S.No.30 of 2011 is set aside and the trial Court is directed to appoint an Advocate Commissioner with a direction to note down the physical of the property and to file a plan with the help of a qualified surveyor and the Village Administrative Officer and the Commissioner fee shall be paid by the revision petitioner. The trial Court shall appoint an Advocate Commissioner within a period of one month from the date of receipt of a copy of this Order and the Advocate Commissioner shall be directed to file his

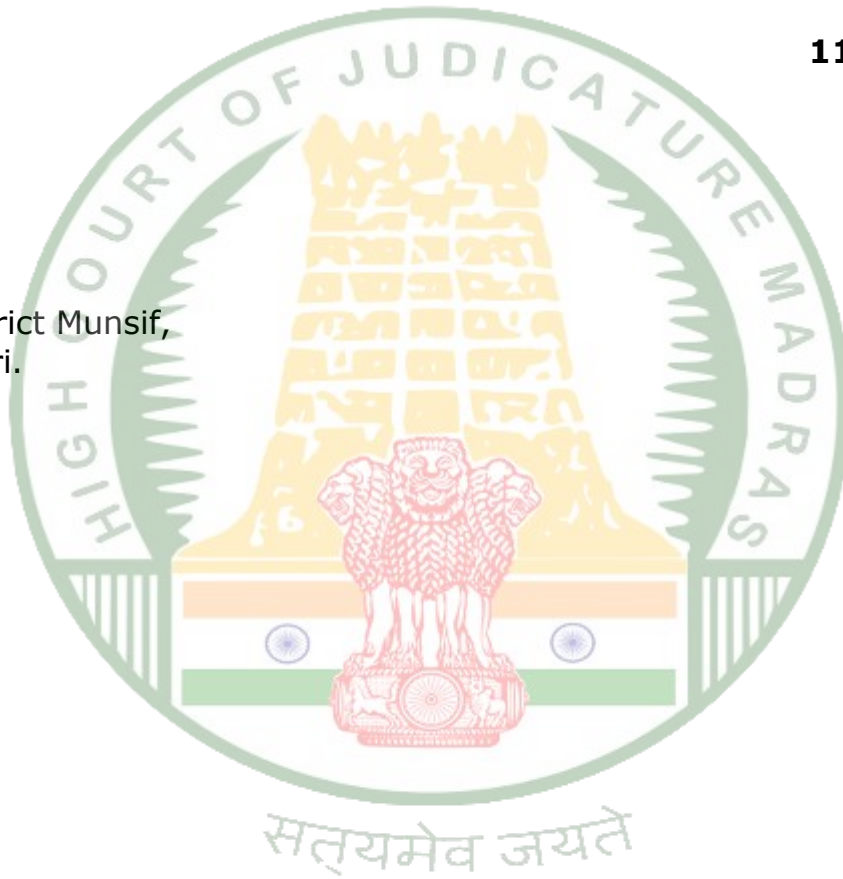
report within two months of his appointment and thereafter, the trial Court shall dispose of the suit expeditiously, not later than six months from the date of filing of the Commissioner report. Consequently, the connected miscellaneous petition is closed. No cost.

11.02.2019

vrc

To

The District Munsif,
Sangagiri.



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N.SATHISH KUMAR, J.

vrc



CRP.(PD) No.2913 of 2013

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