

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No.3161 of 2018

and

CMP.Nos.23402 & 18105 of 2018

A.Balamurugan

.. Petitioner/Respondent

Vs

1.G.Dharmalingam

2.D.Sureshkumar

3.K.Selvam

.. Respondents/Petitioners

Civil Revision Petition filed under Article 227 of Constitution of India to to set aside the fair and decretal order dated 31.08.2018 in I.A.No.882 of 2018 in O.S.No.97 of 2018 on the file of the District Munsif, Omalur.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.P.Ebenezer Paul

ORDER

The above Civil Revision Petition is filed challenging the order of the learned District Munsif, Omalur, appointing an Advocate Commissioner for inspecting the petition mentioned properties in the presence of both parties, note down the physical features, measure the same with the assistance of Village Administrative Officer and

qualified Surveyor as per the title deeds of the parties and the Nattham Patta.

2 The said application in I.A.No.882 of 2018 was filed by the defendants and the same was resisted by the petitioner/respondent on the ground that the suit was one for bare injunction and that the defendant was attempting to collect evidence through the Advocate Commissioner.

3 The learned District Munsif, Omalur, who passed an order dated 31.08.2018, allowing the petition was of the opinion that there was a serious dispute with reference to the measurements of the property particularly as the plaintiff had accused the defendant of encroachment and therefore a necessity to have the properties surveyed and measured arose. The same has been challenged by the plaintiff in the present revision petition. The main fulcrum of the revision petitioner argument is the suit is one for bare injunction and in a bare injunction suit, there cannot be an Advocate Commissioner appointed to note down the physical features of the property and measurement, since, it would amount to collection of evidence.

4 Per contra, the learned counsel appearing on behalf of the respondent/defendant sustained the order by pointing

out to this Court, the fact that in the application filed for an ad-interim injunction in I.A.No.617 of 2017, originally an order of injunction was granted, which was later modified to maintaining status quo since, the Court was of the opinion that there was dispute between the parties with reference to the identity of the property, more particularly the alleged encroachment in the property. In this background, it would be in the interest of both parties for having an Advocate Commissioner appointed.

5 Heard the parties and perused the documents.

6 This Court in the case of *Sivagurunathan Vs. Ramalingam and others* reported in **[(2005) 3 M.L.J 525]**, Mrs.Justice.R.Banumathi, as she then was, had held that where there was a dispute with reference to identity of properties an Advocate Commissioner could be appointed to effectively adjudicate the dispute. The learned judge has held as follows:

"The object of local investigation is to obtain evidence which could be based on only from the spot and the inspection. Report of the advocate Commissioner would enable the Court to properly and correctly understand and assess the evidence on record in resolving the contentious points."

P.T.ASHA, J.
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7 Therefore, I am inclined to accept the order of learned District Munsif, Omalur, however with a modification that the Advocate Commissioner shall only measure the properties of both parties with the help of Village Administrative Officer and a qualified surveyor as per the Title Deeds and the respective Pattas and note down the physical features and submit a report along with measurements. The Advocate Commissioner shall not make any comments on the encroachment.

8 In the result, the Civil Revision Petition is partly allowed. No costs. Consequently connected miscellaneous petitions are also close.

19.02.2019

Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

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To

The learned District Munsif,
Omalur.

CRP.(PD).No.3161 of 2018