



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P. (PD) (MD) No.383 of 2008

and

M.P (MD) No.1 of 2008

WEB COPY

SP Nagappa Chettiar ... Petitioner/1st Respondent/
1st Defendant
vs.

1.Kamalam Aachi ...1st Respondent/Petitioner/
Plaintiff

Subramanian Chettiar (Died)

2.Unnamalai Aachi
3.M.Nagappa Chettiar
4.M.Ravichandran
5.Muthu Valliappan
6.Subramanian

... Respondents 2 to 6/
Respondents 3,4 to 7/
Defendants 3,4 to 7

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the order and decree dated 01.03.2007 in I.A.No.404 of 2006 in O.S.No.89 of 1995 on the file of the learned District Munsif cum Judicial Magistrate, Thirumayam and set aside the same.

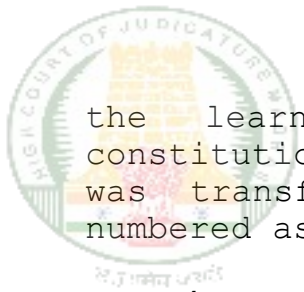
For Petitioner : Mr.A.L.Kannan
For Respondents : No Appearance

ORDER

This Civil Revision Petition has been filed by the first defendant in O.S.No.89 of 1995 pending on the file of the District Munsif cum Judicial Magistrate, Thirumayam challenging the order appointing a second Advocate Commissioner made in I.A.No.404 of 2006.

2. Though the first respondent has been served, she neither appears in person nor through Counsel. The learned counsel for the petitioner gives up respondents 2 to 6.

3. The suit in O.S.No.89 of 1995 was filed seeking permanent injunction to remove the alleged encroachment made by the first defendant over the suit property, which belongs to the plaintiff. The suit was originally filed as O.S.No.273 of 1991 on the file of



the learned Principal District Munsif, Pudukottai. Upon constitution of the District Munsif Court at Thirumayam, the suit was transferred to the District Munsif Court, Thirumayam and numbered as O.S.No.89 of 1995.

4. It is seen that even when the matter was pending before the District Munsif Court, Pudukottai, a Commissioner was appointed and he had filed a report along with the plaint. In fact, no objections have been filed by the parties to the proceedings to the said Commissioner's report. The report of the Advocate Commissioner was filed on 31.01.1994 on the file of the District Munsif Court, Pudukottai. Almost after 12 years, the plaintiff has come with the second application for appointment of an Advocate Commissioner.

5. The claim made in the affidavit filed in support of the application is that, earlier the Commissioner has not measured the property with the help of a Surveyor. As already pointed out, the plaintiff has not filed any objections to the Advocate Commissioner's report, which was filed into Court on 31.01.1994. It is the settled position of law that second Advocate Commissioner cannot be appointed unless, the Court for reasons recorded or scraps the report of the first Advocate Commissioner or finds that further investigation is required in order to completely adjudicate the dispute between the parties.

6. In spite of the fact that earlier Advocate Commissioner had inspected the property and filed a report and the same was brought to the notice of the trial Court both by the petitioner in her affidavit and the respondent in his counter affidavit, the trial Court has appointed the second Advocate Commissioner, even without referring to the claim made in the affidavit and the counter affidavit regarding the inspection made by the first Advocate Commissioner and report filed by him. The learned District Munsif had not even touched upon the issues relating to the power of the Court to appoint the second Advocate Commissioner, when report and the plan of an Advocate Commissioner appointed by the Court is already on record.

7. Therefore, I find that the order of the trial Court appointing an Advocate Commissioner is materially irregular and hence it is liable to be set aside. In fine, this Civil Revision Petition is allowed and the order, dated 01.03.2007 made in I.A.No.04 of 2006 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //



C.R.P.(PD)(MD) No.383 of 2008

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To

The District Munsif cum Judicial Magistrate,
Thirumayam

C.R.P. (PD) (MD) No.383 of 2008
05.12.2019

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