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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.02.2019

DELIVERED ON : 05.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.2353 of 2015

S.K.Thirugnanam .. Petitioner /Petitioner/Defendant

Vs.

Kalanthar Mydeen .. Respondent/Respondent/Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.06.2015 made in I.A.No.323 of 2015 in O.S.No.86 of 2011 on the file of the District Munsif Court, Aranthangi.

For Petitioner	: Mr.J.Anandakumar
	For Mr.A.K.Manickam
For Respondent	: Mr.Saravanan

ORDER

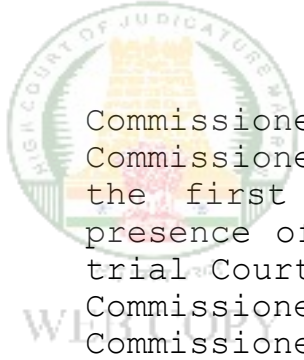
Heard Mr.J.Anandakumar, learned counsel appearing for the petitioner and Mr.Saravanan, learned counsel appearing for the respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.323 of 2015 in O.S.No.86 of 2011 dated 26.06.2015 on the file of the learned District Munsif, Aranthangi.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.86 of 2011 for a prayer of declaration and for injunction and for an alternative prayer of recovery of possession. In that suit, the petitioner has filed a petition in I.A.No.323 of 2015 for appointment of a Court Commissioner under Order 26 Rule 9 of C.P.C. The trial Court has dismissed the petition. Against the order of dismissal, the petitioner has come forward with this revision petition.

<https://hcservices.ecourts.gov.in/hcservices/>

4.On the side of the petitioner, it is stated that the



Commissioner has filed a report but there are discrepancies in the Commissioner report and the Commissioner has wrongly noted down the first schedule property and the inspection was not in the presence of the Village Administrative Officer and Surveyor and the trial Court failed to consider that the appointment of another Court Commissioner is necessary to come to a correct conclusion and in the Commissioner report itself, it is stated that the help of Village Administrative Officer and Surveyor is needed and the Court can re-appoint the very same Commissioner to visit the property and non filing of an objection cannot be a sufficient ground for dismissal of the petition.

5. On the side of the respondent, it is stated that already the Commissioner was appointed as per the order passed in I.A.No.385 of 2011 and the Commissioner filed a report on 30.09.2011 and the petitioner did not file any objections to the Commissioner report. Again the petitioner filed another Commissioner petition in I.A.No.617 of 2013 and the Commissioner has filed a report on 27.10.2013 and in that Commissioner report also, the petitioner has not filed any objection. After nine months, the petitioner has filed this petition for appointment of Commissioner. Already the plaintiff's side evidence is over and P.W.1 was cross examined and the case is posted for further examination of P.W.1 and at this stage, the petitioner has filed this petition and prayed the petition to be dismissed.

6. The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of **Vemba Gounder v. Pooncholai Gounder** reported in (1996) AIR (MAD) 347, which reads as follows:

"After the Commissioner submits his report, the trial Court will first of all decide if the report submitted will be accepted as a piece of evidence. If the trial Court accepts the Commissioners report as a piece of evidence, after hearing the parties it shall then proceed to dispose of the suit in accordance with law after giving the parties an opportunity once again to be heard on the entire evidence on record...."

It may also be noted that if the Court is satisfied that the report is not satisfactory, it need not insist on the petitioner to file an application for the issue of a second Commission. It is the duty of the Court to appoint a second Commissioner or remit the matter to the same Commissioner, for the application is already there."

7. The learned counsel appearing for the respondent relied on the Judgment passed by this Court in the case of **Rangasamy v. The Superintending Engineer and others** reported in 2006 (5) CTC 501, which reads as follows:

"The object of the local investigation under Order 26 Rule 9, is not to collect evidence.....If



there is any doubt about the area of the land, identification or location of an object, then local investigation is necessary.

The lower Court has properly considered the materials on record and found that there is no need to appoint an Advocate Commissioner."

8.The learned counsel appearing for the respondent relied on the Judgment passed by this Court in the case of **Anna Sudha Devi v. P.George Samuel** reported in **2009 (2) CTC 205**, which reads as follows:

"A second Advocate Commissioner cannot be appointed without setting aside report of first Advocate Commissioner."

9.The learned counsel appearing for the respondent relied on the Judgment passed by this Court in the case of **D.Kuttiyappan v. Meenakshiammal Polytechnic Unit of M/s. Meenakshiammal Trust** reported in **2005 (4) CTC 676**, which reads as follows:

"Unless the Court is dissatisfied with the earlier reports, another Commissioner cannot be issued."

10.On the side of the petitioner, it is stated that the trial Court has ordered the Commissioner to visit the suit property and to measure the same with the help of the Surveyor whereas the Commissioner who was appointed by the Court has not utilised the service of the Surveyor and Village Administrative Officer and the Commissioner failed to verify the records of the defendant. Even the Commissioner has stated that the help of Surveyor is necessary. But the trial Court has dismissed the petition, solely on the ground that the petition is a belated one and the petition is for appointment of a third Advocate Commissioner.

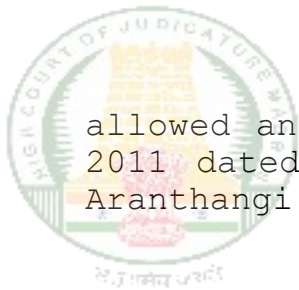
11.It is seen that already a Commissioner was appointed and he filed his report on 30.09.2011 and again another Commissioner was appointed and he filed a report on 27.10.2013.

12.A perusal of the records reveals that the second Advocate Commissioner has stated that he required the assistance of the Surveyor and a reasonable opportunity for the petitioner to be given to put forth his case.

13.In the above circumstances, this Court deems it fit to order the second Court Commissioner to re-visit the suit property and the second Court Commissioner has to measure the property with the help of Surveyor in the presence of Village Administrative Officer at the cost of the petitioner and he can file an additional Commissioner report. The lower Court is directed to fix and collect the necessary fees from the petitioner for the re-visit of Commissioner.

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14.With the above directions, this Civil Revision Petition is



allowed and the order passed in I.A.No.323 of 2015 in O.S.No.86 of 2011 dated 26.06.2015 on the file of the learned District Munsif, Aranthangi is set aside. No Costs.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar (CS)

Mrn

To

The District Munsif, Aranthangi.

+1CC to Mr.A.K.MANICKAM , Advocate SR.No. 59396

+1CC to Mr.R.SUBRAMANIAN , Advocate SR.No. 59489.

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