



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Date : 27.04.2019
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

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C.R.P. (PD) (MD) No. 2596 of 2015
and
M.P. (MD) No. 1 of 2015

Balasubramanai Bharathi

.. Petitioner

Vs.

Kalirethanm

.. Respondent

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.273 of 2015 in O.S.No.111 of 2015 on the file of the District Munsif, Manaparai dated 18.06.2015.

For Petitioner : No Appearance

For Respondent : Mr.R.M.S.Sethuraman

ORDER

Heard Mr.R.M.S.Sethuraman, learned counsel appearing for the respondent. When the matter was called on 22.03.2019, 05.04.2019 and 15.04.2019, the petitioner was not ready for arguments. Even today there is no representation on the side of the petitioner. The respondent is ready for arguments. Hence, it is decided to pass order on merits of the case.

2.The Civil Revision Petition is filed against the order passed in I.A.No.273 of 2015 in O.S.No.111 of 2015 dated 18.06.2015 on the file of the District Munsif, Manaparai.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein filed a suit for a grant of permanent injunction against the defendant. During the pendency of the suit, the respondent herein filed a petition in I.A.No.273 of 2015 under Order 26 Rule 9 of C.P.C., for appointment of a Court Commissioner. The trial Court allowed the petition. Against which, the present revision petition is filed by the petitioner.

<https://hcservices.ecourts.gov.in/reserved>
4.The contention of the petitioner in the petition is that since the suit is filed for permanent injunction, the respondent cannot be permitted to gather evidence by way of appointment of



Commissioner and that already suit property was measured with the assistance of the Town surveyor and the same is marked as Ex.B4. If the Commissioner took the assistance of the same surveyor, the outcome of the measurement would be the same and that the SLR document is pending before the competent authority.

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5. On the side of the respondent, it is stated that the respondent purchased the property on 19.06.2013 and there is 3ft common lane situated between the property of the plaintiff and the defendant. The Surveyor measured the property but the measurement was not accepted by the petitioner herein. Since the dispute between the parties is measurement of the lane, the appointment of the Commissioner is necessary

6. It is seen that the petitioner is claiming that there is no lane in between the property of the plaintiff and the defendant. The claim of the petitioner is that the measurement in the document in the name of the respondent is wrong and the vendor of the respondent is not having the measurement as stated in the sale deed of the respondent. Though sufficient opportunity was given to the petitioner, the learned counsel for the petitioner is not ready for arguments.

7. It is seen that a Surveyor has visited the property and has measured the property but the Surveyor report was marked as Ex.B4. The petitioner is taking a stand that as the property was already measured by the Surveyor, there is no necessity for the visit of the Commissioner. The measurement of the suit property in the presence of an Advocate Commissioner will be reliable and the surveyor report, Ex.B4 can be re-checked.

8. In the above circumstances, this Court deems it fit that an Advocate Commissioner is to be appointed who can be directed to visit the property and to measure the same after considering the documents R1 to R3 and Exs.B1 and B4 and the relevant revenue records with the help of the Surveyor and that he has to measure the property and to file a report before the trial Court. The trial Court has to fix the remuneration for the Court Commissioner.

9. With the above direction, this Civil Revision Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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To

The District Munsif, Manaparai.

+1cc to Mr.R.M.S.Sethuraman, Advocate, SR.No. 63514

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