



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (MD) No.785 of 2019

and

CMP. (MD) No.4852 of 2019

Jothi

...Petitioner / Petitioner /
Plaintiff

Vs.

Devakunjari

... Respondent / Respondent /
Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.06.2018 made in I.A.No.100 of 2018 in O.S.No.44 of 2017 on the file of the District Munsif cum Judicial Magistrate Court, Peraiyur.

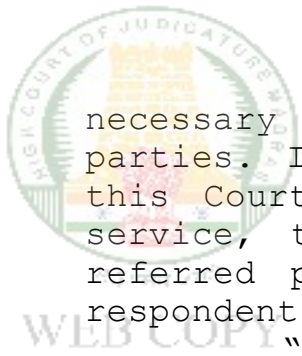
For Petitioner : Mr.M.Gnanagurunathan

O R D E R

This Civil Revision Petition has been filed challenging the order, dated 20.06.2018, passed in I.A.No.100 of 2018 in O.S.No.44 of 2017, by the learned District Munsif cum Judicial Magistrate, Peraiyur.

2.The said application in I.A.No.100 of 2018 in O.S.No.44 of 2017 was filed for appointment of Advocate Commissioner by the petitioner / plaintiff. The respondent filed counter stating that no objection, at paragraph No.4 of the counter filed in the above application. In spite of the same, the Court below, without considering the submission of the revision petitioner as well as the respondent, dismissed the application for appointment of Advocate Commissioner stating that the present application has been preferred after the commencement of the trial.

3.It is the only grievance that both the parties agreed for the appointment of Advocate Commissioner, however, without considering the same, the court below rejected the application, whereas the appointment of Advocate Commissioner is very much



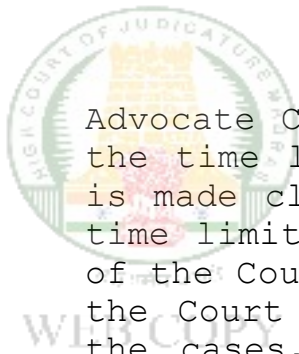
necessary to settle the present dispute amicably between the parties. In fact, though the respondent has not appeared before this Court when the matter is called, after the completion of service, the learned counsel for the revision petitioner has referred paragraph No.4 of the counter affidavit filed by the respondent in the above application, which reads as follows:-

"4.I submit that, I have no objection for appointment of Commissioner by directing him to inspect and measure the suit property with an assistance of qualified surveyor on the guise of document of petitioner and the respondent along with FMB and patta and also direct the Commissioner to inspect and measure the entire property situate in S.Nos.188/2 and 188/3 with the help of qualified surveyor. Only if the entire extent of the property situate in S.No.188/2 and 188/3 as per their respective subdivisions are measured, the truth will come out and the same will solve the dispute between the parties. Accordingly this Honourable Court has to issue suitable direction to the Commissioner by issuing warrant. If specific directions are not issued to the Commissioner regarding the above mentioned aspect, then the purpose of appointment of advocate/commissioner will not service any purpose. If it is so, the entire truth will come into light."

4.Heard the learned counsel for the revision petitioner and perused the materials available on record.

5.In view of the fact that the respondent has filed an affidavit stating that he has no objection for appointment of Advocate Commissioner, this Court is of the opinion that there is no impediment for the Court below to appoint an Advocate Commissioner, as both the parties agreed and it will bring quietus to the matter based on the report, as the property to be measured and the same will be identified.

6.When such being the case, the Court below should have considered the submission of both the parties, but on the other hand, since because the trial has commenced, the Court below without considering the said fact, rejected the application, which is not acceptable. Therefore, this Court directed the Court below to pass order to appoint an Advocate Commissioner directing him to inspect and measure the suit property with an assistance of qualified surveyor on the basis of the documents produced by both the parties along with FMB and patta and this Court also directed the Advocate Commissioner to inspect and measure the entire property situated in Survey Nos.188/2 and 188/3 with the help of qualified Surveyor, within a period of two weeks from the date of receipt of a copy of this order. Further, while appointing the



Advocate Commissioner, this Court directed the Court below to fix the time limit to complete such exercise and file his report. It is made clear that in the event, if the Court below is fixed any time limit, the Advocate Commissioner shall comply with the order of the Court below and file his report within the time as fixed by the Court below without any extension of time, since in many of the cases, after the appointment of Advocate Commissioner, they have not filed the report on the date fixed by the Court below. Therefore, the Advocate Commissioner is hereby strictly directed to file the report within the time frame fixed by the Court below.

7. With the above directions and observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

The District Munsif cum Judicial Magistrate,
Peraliyur

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-94011[F] dated
23/10/2019)

**Order made in
C.R.P (MD) No.785 of 2019
and
CMP. (MD) No.4852 of 2019
23.10.2019**

KM/(25.11.2019) 3P 3C