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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(MD)No.1832 of 2019
and
CMP(MD)No.9444 of 2019

Kannan : Petitioner/Petitioner/
Plaintiff

versus

1. Mohansingh
2.Ramalingam : Respondents/Respondents/
Defendants

Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 29.10.2018 in I.A.No.154 of 2018 in O.S.No.134 of 2016 on the file of the learned District Munsif, Pattukkottai.

For Petitioner : Mr.K.K.Ramakrishnan

ORDER

The revision petitioner herein is the plaintiff in O.S.No.134 of 2016 before the learned District Munsif, Pattukkottai. The respondents herein are the defendants in the said suit.

2. It is the case of the revision petitioner that he filed the suit seeking the relief of declaration, declaring that he is the absolute owner of B Schedule property and for the relief of permanent injunction restraining the first defendant from constructing any building in the 'B' schedule property and also for Ad-interim injunction directing the 1st defendant to demolish the wall constructed in the B schedule property and also for permanent injunction restraining the second defendant from constructing any building in the parallel side of southern portion of A schedule property. During the pendency of the suit, the plaintiff/revision

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petitioner filed an application in I.A.No.154 of 2018 in O.S.No.134 of 2016 seeking appointment of Advocate Commissioner to inspect the suit schedule property. After inspecting the said property, the Advocate Commissioner filed his report. Since some defects were found in the Commissioner's report, he filed another application in I.A.No.154 of 2018 in O.S.No.134 of 2016, seeking for re-appointment of Advocate Commissioner to inspect the property with the help of Surveyor. However, the Court below, after considering the arguments on both sides, dismissed the application stating that the petitioner has filed the present application without filing any objection to the Commissioner's report and also for the purpose of dragging on the proceedings. Challenging the same, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioner submits that though the revision petitioner filed his objection, the Court below has not considered the said objection and not recorded the same. Therefore, he pleaded that the order of the Court below has to be set aside and the request of the revision petitioner for re-appointment of Advocate Commissioner has to be re-considered.

4. Heard the learned counsel appearing for the revision petitioner.

5. Admittedly, the Court below has appointed an Advocate Commissioner to inspect the suit property with the help of surveyor in I.A.No.453 of 2016. The Commissioner appointed by the Court below inspected the property and filed his report. The revision petitioner also filed his objection. However, he filed another application in I.A.No.154 of 2018 before the Court below for appointment of Advocate Commissioner once again to inspect the suit property with the help of Surveyor. The Court below dismissed the said application stating that the revision petitioner herein has not filed any objection to the Commissioner's report already filed, though it is the stand of the revision petitioner that he has already filed his objections to the Commissioner report, but, the Court below has not considered the same.

6. Be that as it may. The grievance of the revision petitioner would be redressed if he is permitted to cross examine the Advocate Commissioner which would put an end to the prayer of the revision petitioner for appointment of the Advocate Commissioner afresh. In such view of the matter, to give a quietus to the issues, this Court directs the Court below to permit the revision petitioner to cross examine the Advocate Commissioner and thereafter, the Court below shall decide the objections on merits.

7. The Civil Revision Petition is disposed of with the aforesaid direction. No costs. However, it is made clear that it is for the plaintiff to establish his case by adducing oral and documentary evidence and if any other plea is made for dragging on

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the proceedings, the same shall be dismissed with costs, by the trial Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

The learned District Munsif,
Pattukkottai.

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate SR-92716.

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