

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

CORAM:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

CIVIL REVISION PETITION NO.4024 OF 2018

AND

C.M.P.NO.22276 OF 2018

T.M.Thiruvankadasamy

.. Petitioner

//versus//

M.Sundarajan

.. Respondent

Prayer:-

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the appointing Advocate Commissioner vide order dated 28.09.2018 in I.A.No.1755 of 2018 in O.S.No.20 of 2018 on the file of the Third Additional District and Sessions Court, Erode at Gobichettipalayam

For Petitioner :Mr.V.P.K.Gowtham

For Respondent :Mr.A.Sundaravadhanan

O R D E R

(The case has been heard through Video Conferencing)

The Revision Petition is filed challenging the order of the Trial Court appointing Advocate Commissioner to inspect the suit schedule property.

2.The plaintiff in the suit for declaration and mandatory injunction regarding cart track has taken out an application under Order 26, Rule 9 of CPC, to appoint an Advocate Commissioner to note down the existing physical feature. The defendant has filed a counter stating that in respect of A schedule property the plaint averments are accepted and in respect of B schedule property, he has no objection measuring B schedule property with the help of Surveyor, but to ascertain whether any encroachment in respect of B schedule property, C and D schedule property should also be measured. The Trial Court after considering the petition and counter appointed an Advocate Commissioner to inspect and measure the B schedule

property with the help of Surveyor. Aggrieved by that, the present civil revision petition is filed.

3.The main contention raised in the revision petition is that the appointment of Advocate Commissioner is to make rowing enquiry and collecting evidence, since the plaint schedule provides specific boundary, there is no necessity for appointment of Advocate Commissioner.

4.The learned counsel appearing for the respondent/plaintiff submits that pursuant to the impugned order, the Advocate Commissioner inspected the property with the help of surveyor and filed report. The petitioner herein also filed his objection to the Commissioner Report. The matter is ripe for trial.

5.In the light of the above facts, this Court finds that there is no necessity to entertain this revision petition, since the petitioner has already filed his objection to the report of the Advocate Commissioner before the Trial Court. It is needless to say that the Trial Court will consider the report of the Advocate Commissioner and objection in accordance with law and decide the suit on merits. Hence, this Civil Revision Petition is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ari

To:

The III Additional District and Sessions Court,
Erode at Gobichettipalayam.

+1cc to Mr.A.Sundaravadhanan, Advocate, S.R.No.35387

C.R.P.No.4024 of 2018
and
C.M.P.No.22276 of 2018

UM(CO)
CS/08/12/2020