



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.R.P(NPD) (MD)No.1019 of 2011

and

M.P(MD)No.1 of 2011

M.Amirthammal ... Petitioner / Respondent / Respondent

Vs.

1.Sivaraman

2.Ramasubramanian

... Respondents / Petitioners / Petitioners

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 25.11.2020 made in I.A.No.250 of 2010 in A.S.No.29 of 2010 on the file of the Sub-Court, Sivagangai.

For Petitioner : Mr.S.Srinivasa Raghavan
For Respondents : Mr.S.Ramesh

O R D E R

The petitioner has filed this Civil Revision Petition against the fair and decreetal order dated 25.11.2020 made in I.A.No.250 of 2010 in A.S.No.29 of 2010 on the file of the Sub-Court, Sivagangai.

2. The petitioner/plaintiff filed a suit in O.S.No.107 of 2009 on the file of the District Munsif, Sivagangai, praying for a relief of permanent injunction restraining the respondents/defendants and their men from interfering with the demolition and reconstruction of a compound wall by the petitioner /plaintiff. The said suit was decreed in favour of the petitioner / plaintiff. Against which, the respondents / defendants filed A.S.No.29 of 2010 on the file of the Sub-Court, Sivagangai. In the said appeal suit, respondents / defendants filed I.A.No.250 of 2010 seeking appointment of an Advocate Commissioner. The said application was allowed, vide order dated 25.11.2020. Against which, the present Civil Revision Petition has been filed by the petitioner / plaintiff.

3. The learned counsel for the petitioner contended that the first appellate Court erred in giving a finding that the counsel



for the petitioner / respondent had fairly conceded to appoint an Advocate Commissioner in this matter and no such consent was given by the counsel for the petitioner / respondent for such appointment and prays for appropriate orders.

4. Heard the learned counsel appearing for the respondents also and perused the materials available on record.

5. It is seen that the observation made with regard to the objection endorsed by the petitioner's counsel before the first appellate Court in respect of appointment of an Advocate Commissioner is the dispute herein. Such observation was made actually without obtaining consent or no objection from the petitioner / contesting respondent and therefore, the first appellate Court erred in rendering such finding.

6. In such view of the matter, this Civil Revision Petition is allowed and the order dated 25.11.2020 made in I.A.No.250 of 2010 in A.S.No.29 of 2010 on the file of the Sub-Court, Sivagangai, is hereby set aside. The matter is remitted back to the file of the Sub-Court, Sivagangai, which shall render proper finding with regard to the claim agitated by the parties after giving due opportunity to both the parties. Considering the long pendency of the matter, such an exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

pm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Judge, Sub-Court,
Sivagangai.

2.The Record Keeper-2 copies

V.R.Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.V.RAGHAVACHARI, Advocate (SR-21400[F] dated
06/11/2020)

+1 CC to Mr.S.SRINIVASARAGHAVAN, Advocate (SR-21405[F] dated
06/11/2020)

C.R.P (MD)No.1019 of 2011 (NPD)

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VR (CO)

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