



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2020

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD)No.1437 of 2019

and

C.M.P. (MD)No.7641 of 2019

R.M.Thamilarasi : Petitioner/1st Respondent/1st Defendant

.. Vs ..

1. M.Muthuramalingam : 1st Respondent/Petitioner/Plaintiff

2. The Administrative Officer,
Pallathur Town Panchayat,
Pallathur.

: 2nd Respondent/2nd Respondent/2nd Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records relating to the order dated 11.07.2019 passed in I.A.No.57 of 2019 in O.S.No.72 of 2017 on the file of the Principal District Munsif-cum-Judicial Magistrate, Karaikudi, and set aside the same and consequently allow the present Civil Revision Petition.

For Petitioner : Mr.J.Anandkumar

For Respondent 1 : Mr.R.Sundar Srinivasan

For Respondent 2 : Mr.J.Gunaseelan Muthiah

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ORDER

This Civil Revision Petition is directed against the order of the learned Principal District Munsif-cum-Judicial Magistrate, Karaikudi, in I.A.No.57 of 2019 in O.S.No.72 of 2017.

2.Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and perused the materials on record.



3.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.1.The revision petitioner is the first defendant in the suit in O.S.No.72 of 2017. The first respondent, as plaintiff, filed the suit in O.S.No.72 of 2017 for declaration of his title and for consequential reliefs in respect of the suit properties measuring an extent of 820 square feet located on the northern side of Survey No.65/31 in Ward No.1 in Pallathur Village. The suit was contested by the defendants disputing the title of the plaintiff/first respondent. During the pendency of the suit, the first respondent filed an application for appointment of an Advocate Commissioner to inspect the property along with the Village Administrative Officer and Taluk Surveyor and to submit a report regarding the physical features of the suit property. The said application was allowed by the lower Court and the first defendant in the suit has now filed the above Civil Revision Petition challenging the order of appointment of Advocate Commissioner.

4.The learned Counsel appearing for the revision petitioner submitted that the Commissioner in the present case was appointed to collect evidence and that there is no justification for appointment of Advocate Commissioner to prove the case of the plaintiff. The learned Counsel submitted that the title of plaintiff is seriously an issue in the suit and that the appointment of Advocate Commissioner is purely for the purpose of collecting evidence on behalf of the plaintiff after his evidence was over. The learned Counsel further submitted that the petitioner has not even pleaded anything about the nature of dispute so as to assume that the Commissioner's report is warranted. This Court considered the submissions of the learned Counsel for the petitioner and the order of the lower Court giving reasons for appointing an Advocate Commissioner. The lower Court has found that the claim of the petitioner in the suit is disputed by the revision petitioner on the ground that the two portions of the property is separated. Taking note of the fact that the plaintiff has pleaded that the property lies on the northern side of Survey No.65/31, the lower Court justified the appointment of Advocate Commissioner to inspect the property. The direction was to note down the physical features of the property. This Court, having regard to the nature of dispute, is of the view that the Commissioner's report will certainly highlight at least to understand the real dispute between the parties. This Court is unable to accept the contention of petitioner's Counsel that the Commissioner's application is to collect evidence. The role of the Advocate Commissioner in the present case appears to be for real purpose, at least to find out whether the statement on facts pleaded by the plaintiff and defendants in the suit is true or not.



5.As a result, this Civil Revision Petition is dismissed as devoid of any merits. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

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/ /2020

Sub Assistant Registrar(CS)

SRM

To

The Principal District Munsif-cum-Judicial Magistrate,
Karaikudi.

+1 CC to M/s.R. SUNDAR SRINIVASAN, Advocate SR-17333.

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16.09.2020

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