

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.02.2021**

CORAM:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

C.R.P.(PD). No.1320 of 2018
and
C.M.P.No.6847 of 2018

Sinnaian @ Punniakodi

..Petitioner

Vs

Anbarasi

..Respondent

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 20.02.2018 passed in I.A.No.541 of 2017 in O.S.No.2 of 2015, on the file of the Principal Subordinate Judge, Puducherry, by allowing this Civil Revision Petition.

For Petitioner : Mr.S.Subbiah, Senior Counsel
for M/s.Elizabeth Ravi

For Respondent : Mr.T.M.Naveen

ORDER

This Civil Revision Petition has been filed to set aside the order dated 20.02.2018 passed in I.A.No.541 of 2017 in O.S.No.2 of 2015 on the file of the Principal Subordinate Judge, Puducherry.

2. The I.A was filed for the purpose of appointment of Advocate Commissioner under Order 26 Rule 9 read with Section 151 of C.P.C to measure the entire suit properties “A” and “B” in the schedule and also to measure the Lane / access left out on the Eastern side of the suit property running from Madha Koil street to Northern end of the property and also to measure the total extent of Patta No.412 and also to measure the extent and area in enjoyment of both plaintiff and defendant in the “A” and “B” schedule properties and to note down the physical features of both the houses of plaintiff and defendant, with the assistance of a Government Surveyor based on the documents of both parties and Government Records and submit the report in detail with sketch.

3. Mr.S.Subbiah, learned Senior Counsel appearing for petitioner would submit that the petitioner in the above I.A., has filed second application for the appointment of Advocate Commissioner.

4. The respondent herein preferred an I.A.No.20 of 2015 for the purpose of appointing an Advocate Commissioner to visit the suit schedule

properties and to note down the physical features of the newly erected wall obstructing the passage from Madha Koil Street to the property of the petitioner and file his report in this regard.

5. The second application for the purpose of appointment of Advocate Commissioner has been filed only for the purpose of collecting the evidences. The measurements of the properties has been mentioned in the suit schedule properties. Therefore, there is no hardship to the Court below to arrive at any conclusion to decide the matter. Further, nothing prevents the respondent to file the present application at the earliest point of time and ask for the prayer sought in the present application. The present application has been filed only to drag the further proceedings in the suit. Therefore, he strongly opposes the appointment of a second Advocate Commissioner.

6. On the other hand, the learned counsel appearing for the respondent would submit that the first application for appointment for Advocate Commissioner in I.A.No.20 of 2015 was filed along with the suit

and petition for an interim mandatory injunction was filed to remove the wall. Therefore, he filed said application for appointment of an Advocate Commissioner to note down the physical features of the newly erected wall which has been obstructing the passage from Madha Koil Street to the property of the petitioner. Whereas, the second application filed by the respondent for appointment of Advocate Commissioner was for different purposes and purposes of these two applications are entirely different. Therefore, the court below has correctly considered and came to the conclusion that appointment of Advocate Commissioner is only for the proper adjudication of this case, and therefore, they have appointed Advocate Commissioner.

7. Heard the learned Senior Counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondent and perused the materials available on record.

8. I.A.No.20 of 2015 was filed along with the O.S.No.2 of 2015 for the appointment of Advocate Commissioner to visit the suit schedule

property and to note down the physical features of the newly erected wall obstructing the passage from Madha Koil Street to the property of the petitioner and file his report. But the second application was filed is entirely different and for different purposes as narrated in the paragraph No.2 and now the issue to be decided is as to whether by virtue of appointing a second Advocate Commissioner, the respondent is making any attempt to collect the evidences or not?

9. It is relevant to note the point that the first report filed in I.A.No.20 of 2015, the Advocate Commissioner has not identified and measured the suit property. The present case is only to identify the suit properties and its physical features as narrated in the Paragraph No.2 of this order.

10. After hearing the counsels on either side, this Court is of the view that it would be appropriate to extract paragraph No.8 of the order of the Court below passed in I.A.No.541 of 2017.

“ I heard both and perused the records. Already one Advocate Commissioner was appointed in I.A.20 of 2015 and

the said Advocate Commissioner also filed his report. Both parties had filed their objections respectively. On perusal of the above Advocate Commissioner report, it is relevant that he note down the physical features of lane situated on the suit property. But he has not identified the 'A' & 'B' schedule property and also other physical features being the suit for recovery of possession and Mandatory Injunction. It is also necessary to find out that what are all the extent existing in the 'A' & 'B' schedule property and also the extent of lane and also the extent of alleged wall in which the relief sought for mandatory injunction are necessary for proper adjudication of this case. But the argument put forth by the respondent regarding that the Advocate Commissioner is not a competent person to speak about the possession is also accepted by this Court. Under the above circumstances, in the interest of justice and for proper adjudication of this case, this Court decided to allow this petition. Thus, this point is answered accordingly.”

11. On perusal of the above said order, it has been clearly stated that the reason why the first Advocate Commissioner was appointed and the reason why the present Advocate Commissioner was appointed. In the first Advocate Commissioner's Report, the Advocate Commissioner noted down

the physical features of the suit property. But he has not identified the A & B schedule property and also physical features of the suit property. Under these circumstances, only the respondent herein filed the above I.A.No.541 of 2015 to identify the A & B schedule properties and also to note down the physical features of the suit property. Therefore, it would be appropriate to appoint the Advocate Commissioner in the interest of justice and also for the purpose of proper adjudication.

12. This Court is also of the view that on perusal of the order of the Court below and also on perusal of the application filed in I.A.No.541 of 2017 also shows that though the Advocate Commissioner sought to file report for various aspects and ultimately all those information required only for the proper adjudication of the suit.

13. I do not find anything which would help the plaintiff to improve his case further in anyway, as the Advocate Commissioner was appointed only to measure the extent of the property in the A schedule as well as the B schedule. Based on the report of the Advocate Commissioner, the Court

below will arrive at a conclusion after taking into consideration of other documentary and oral evidences about the encroachment in the A & B schedule properties which will help the Court below to take correct decision. With regard to the encroachment of A and B schedule property, of course, it is for the plaintiff to establish his case through both documentary and oral evidences. Therefore, I am also of the view that it would be appropriate to appoint the Advocate Commissioner, and do not find any infirmity in the order passed by the Court below.

14. While concurring with the order passed by the Court below with regard to the appointment of Advocate Commissioner, this Court directs the Advocate Commissioner to complete the entire exercise within a period of three months from the date of receipt of a copy of this order and file the report. Both the parties to the suit can file their objections if any and thereafter, the Court below shall permit the parties to the suit to cross examine the Advocate Commissioner, if so desired.

15. In the result, the Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

01.02.2021

Pns

Index: Yes/No

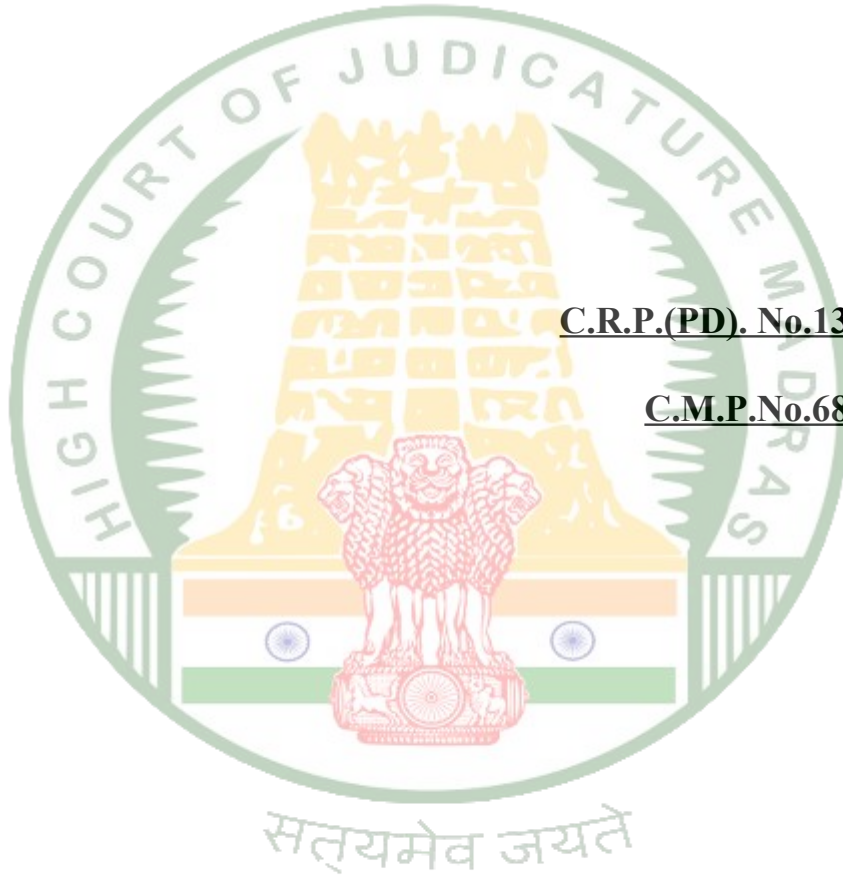
Internet: Yes

Speaking/Non speaking order



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Krishnan Ramasamy, J.,
Pns



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01.02.2021

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