

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.1142 of 2021
and
C.M.P.No.8813 of 2021

M.Maideen

... Petitioner/Petitioner/Plaintiff

Vs

1.Muthupandiyar
2.Sasikala

... Respondents/Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and Decreeal order dated 07.03.2020 made in I.A.No.498 of 2019 in O.S.No.44 of 2015 on the file of the District Munsif Court, Tiruthuraippondi, Tiruvarur District.

For Petitioner

..

Mr.K.Sellathurai

For Respondents

..

No appearance

ORDER

The revision petition has been filed by the plaintiff in O.S.No.44 of 2015 now pending on the file of the learned District Munsif, Tiruthuraipooni. O.S.No.44 of 2015 has been filed for permanent injunction.

2.During the course of the pendency of the suit, the defendants had filed an application seeking to appoint an Advocate Commissioner. An Advocate Commissioner had also been appointed, and a report had been filed.

3.It is the grievance of Mr.K.Sellathurai, learned counsel for the petitioner that the report of the learned Advocate Commissioner is a biased report. However, the report still stands. That is an another grievance of the learned counsel for the petitioner herein, who states that the report should be actually set aside and rejected by the learned District Munsif, Tiruthuraipooni.

4.Be that as it may, the trial in the suit had commenced. On the side of the revision petitioner/plaintiff, four witnesses have already been examined. PW-4 is the Land Surveyor. It is also stated by the Mr.K.Sellathurai, learned counsel that the Advocate Commissioner had also been examined and had been cross-examined on behalf of the present petitioner herein.

5. Therefore, instead of appointing another Advocate Commissioner, seeking which relief, I.A.No.498 of 2019 had been filed and which application came to be dismissed by the learned District Munsif, Tiruthuraipoondi, by order dated 07.03.2020 giving rise to the present Revision Petition, a direction is given to the learned District Munsif, Tiruthuraipoondi, to examine the report of the learned Advocate Commissioner, not just on the basis of the report, per se, but also on the basis of the cross-examination of the Advocate Commissioner by the plaintiff and thereafter come to a considered decision whether to accept or to reject the report of the Advocate Commissioner's report. Either way, the learned District Munsif should give reasons to either rejecting or for accepting the Advocate Commissioner's report. These reasons should form part of the main judgment.

6.The parties are directed to go back to the trial process and adduce evidence in the normal course. The learned District Munsif, Tiruthuraipoondi, should apply his mind and thereafter, give a considered judgment on all the issues framed by him and also whether he is going to accept or reject the report of the Advocate Commissioner. Such finding should also be based on the cross-examination conducted by the plaintiff.

7.Mr.K.Sellathurai, learned counsel appearing for the petitioner placed a further request that if it is required the petitioner may also if file necessary application to summon the Advocate Commissioner to subject himself for further cross-examination. If necessary application in that regard is filed and if appreciable reasons are given, the learned District Munsif, Tiruthuraipoondi, may apply his mind and pass appropriate orders.

8.With the above observations, the Civil Revision Petition is disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

15.06.2021

Internet:Yes/No

Index:Yes/No

smv

C.V.KARTHIKEYAN,J.

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To
The District Munsif Court, Tiruthuraipoondi.



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