



WEB COPY

C.R.P. (PD) .No.570 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.570 of 2016

and

C.M.P No.1323 of 2016

C.Ramalingam

.. Petitioner

Vs.

1.C.Soundaram

2.C.Palanisamy

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order dated 25.09.2014 made in I.A No.2893 of 2014 in O.S No.2024 of 2014 on the file of the I Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.L.Mouli

For Respondents : No Appearance for R1

ORDER

This Civil Revision Petition is filed against the fair and final order dated 25.09.2014 made in I.A No.2893 of 2014 in O.S No.2024 of 2014 on the file of the I Additional District Munsif Court, Coimbatore.



2.The petitioner is the 1st defendant, 2nd respondent is the 2nd defendant and 1st respondent is the plaintiff in O.S.No.2024 of 2014 on the file of the I Additional District Munsif Court, Coimbatore. The 1st respondent has filed the said suit for permanent injunction, restraining the petitioner and 2nd respondent from interfering and disturbing with his peaceful possession and enjoyment of the suit property. Along with the suit, the 1st respondent filed I.A.No.2893 of 2014 under Order XXVI Rule 9 r/w Section 151 of Civil Procedure Code, for appointment of an Advocate Commissioner to note down the physical features of the suit property and also to measure the suit property along with Taluk Surveyor as per the relevant documents, to identify the boundary of southern side of Survey No.313 in Saravanampatti Village and to demarcate the boundaries and file detailed report with plan. The said application was taken on file on the same day of filing of the suit and application and the learned Judge appointed an Advocate as Commissioner to note down the physical features of the suit property and also to measure the suit property.

3.The petitioner is challenging the said order on the ground that without issuing notice to him and without giving any reason for appointing the Advocate Commissioner, by a non-speaking order, the learned Judge



appointed an Advocate as Commissioner. The 1st respondent has filed the suit only for bare injunction. In a suit for bare injunction, appointment of an Advocate Commissioner, to note down the physical features is only to collect evidence. The order of the learned Judge, without giving any opportunity to the petitioner, is liable to be set aside and prayed for allowing the Civil Revision Petition.

4.Though notice has been served on the 1st respondent through counsel and her name is printed in the cause list, there is no representation for her either in person or through counsel.

5.Heard the learned counsel appearing for the petitioner and perused the entire materials available on record.

6.From the materials available on record and the impugned order of the learned Judge, it is seen that the 1st respondent has filed a suit for permanent injunction and along with the suit, she has filled application for appointment of an Advocate Commissioner. The learned Judge, at the 1st hearing of the suit and application, appointed an Advocate as Commissioner, as prayed for by the 1st respondent. The learned Judge has not given any reason for appointing an Advocate Commissioner, without giving any opportunity to the petitioner. The learned counsel appearing for the petitioner submitted that in view of the



stay granted by this Court, the Advocate Commissioner has not visited the property and filed report. Considering the relief sought for by the petitioner and 1st respondent in the suit, the petitioner is entitled to notice and an opportunity to put forth his case.

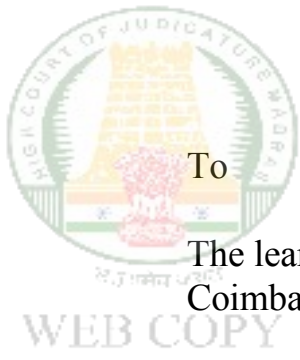
7.For the above reason, the impugned order of the learned Judge dated 25.09.2014 made in I.A No.2893 of 2014 in O.S No.2024 of 2014 is liable to be set aside and is hereby set aside. I.A.No.2893 of 2014 is remanded back to the file of I Additional District Munsif Court, Coimbatore. The learned I Additional District Munsif, Coimbatore, is directed to give an opportunity to the petitioner to file counter and after hearing the petitioner and respondents, pass orders on merits and in accordance with law.

8.With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.12.2021

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Index : Yes / No
Internet : Yes / No



To

The learned I Additional District Munsif Judge,
Coimbatore.

V.M.VELUMANI, J.



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