

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

**C.R.P.(PD) No.2890 of 2018
and
CMP No.16941 of 2018**

Vasantha Kumari ... Petitioner

Vs

1.Pradeep Kumar
2.Ashwin Kumar ... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 26.04.2018 made in I.A.No.198 of 2017 in O.S.No.500 of 2017 on the file of the Subordinate Judge, Cuddalore.

For Petitioner : M/s.S.R.Sumathy
For R1 : Mr.C.Prasanna Venkatesh
For R2 : Notice served

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 26.04.2018 made in I.A.No.198 of 2017 in O.S.No.500 of 2017 on the file of the Subordinate Judge, Cuddalore, thereby allowing the petition seeking appointment of Advocate Commissioner.

2. The petitioner is the defendant and the respondents are the plaintiffs. The respondents filed a suit for bare injunction in respect of the suit property. While pending suit, the respondents filed a petition for seeking appointment of Advocate Commissioner to inspect the suit property and to note down the physical features and note the access to the suit property.

3. On perusal of the affidavit filed in support of the application revealed that the petitioner is an influential person and at any time she may trespass into the suit property during the pendency of the suit. Therefore, the Advocate Commissioner may be appointed to note down the physical features of the suit property and also to note down the ingress and engross of the suit property.

4. Admittedly, the suit is filed for bare injunction. Therefore, the respondents ought to have proved their case by let in evidence. The appointment of Advocate Commissioner does not arise in the present suit for bare injunction and it would amount to collection of evidence by the

respondents. Without considering the above, the Court below appointed the Advocate Commissioner.

5. In view of the above, the order dated 26.04.2018 passed by the Subordinate Judge, Cuddalore in I.A.No.198 of 2017 in O.S.No.500 of 2017 is hereby set aside and the Civil Revision Petition is allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

01.07.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

The Subordinate Judge,
Cuddalore.

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C.R.P.(P.D).No.2890 of 2018

G.K.ILANTHIRAIYAN,J.

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