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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD).No.662 of 2018
and
C.M.P.No.3417 of 2018
[Video Conferencing]

Minor Kevin
Rep. by mother & Natural Guardian
Malarvizhi

...Petitioner

vs.

1.Iyappan
2.Saraswathi
3.Karthich

...Respondents

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 06.07.2017 passed in I.A.No.600 of 2016 in I.A.No.273 of 2016 in O.S.No.69 of 2016 by the District Munsif Court, Paramathi.

For Petitioner : Mrs.L.Parvin Banu
For R1 : Served
For R2 : Mr.T.Dhanyakumar
For R3 : Left

O R D E R

This Civil Revision Petition has been filed by the petitioner against the order passed in I.A.No.600 of 2016 in I.A.No.273 of 2016 in O.S.No.69 of 2016 by the District Munsif Court, Paramathi.

2.The facts of the case, in a nutshell, are that the petitioner herein is the plaintiff and the respondents herein are the defendants in the suit in O.S.No.69 of 2016. The suit was filed for permanent injunction and for costs. The respondents herein has filed the above application in I.A.No.600



of 2016 in I.A.No.273 of 2016 in O.S.No.69 of 2016 to appoint Advocate Commissioner to inspect and measure the suit property with the help of the Taluk Surveyor and file his Report along with Map. Since the said application was allowed by the impugned order, dated 06.07.2017, this Civil Revision Petition has been filed by the defendants therein.

3.Heard the learned counsel for the petitioner and the respondents and perused the materials placed on record.

4.The revision petitioner herein is the plaintiff in O.S.No.69 of 2016, sought for permanent injunction against the defendants therein from interfering with the possession of the suit property and the Advocate Commissioner has also filed his report. It is further submitted that the respondents herein who are the defendants without even filing objection to the Commissioner's Report, filed I.A.No.600 of 2016 for appointment of Advocate Commissioner to inspect the suit property and measure the same with the aid of Surveyor. The Trial Court without considering the fact that without filing objection to the earlier Advocate Commissioner's Report and without scrapping the earlier report of the Advocate Commissioner, the respondents herein are not entitled to file any such petition.

5.The learned counsel for the petitioner would submit that the earlier Advocate Commissioner did not serve any notice for the inspection of the suit property and hence subsequent petition in I.A.No.600 of 2016 was filed and the Trial Court has rightly allowed the petition by appointing Advocate Commissioner. But, as submitted by the learned counsel for the petitioner herein without filing any objection to the earlier Advocate Commissioner and without scrapping of the earlier Advocate Commissioner's Report, the respondents herein is not entitled to file subsequent petition for appointment of Advocate Commissioner.

6.While hearing the arguments, the learned counsel for the parties, submitted that warrant may be issued to the same Advocate Commissioner Mr.M.Babu, he may be directed to inspect and measure the suit property with the help of the Taluk Surveyor and file his Report.

7.Considering the submissions made by the learned counsel for parties and for proper adjudication of the case, the Trial Court is directed to issue warrant to the Advocate Commissioner Mr.Babu, with a direction to inspect and measure the suit property with the assistance of the Taluk Surveyor after giving notice to parties and file his report. The remuneration fixed to the Advocate Commissioner is to be shared by the parties. The Trial Court is also directed to dispose of the case on merits.



8. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ssi

To:

1. The District Munsif,
Paramathi.
2. The Section Officer,
V.R. Section,
High Court of Madras.

+lcc to M/s.L.Parvin Banu, Advocate, S.R.No.64322

C.R.P. (PD) .No.662 of 2018

SPD(CO)
RGA(23/12/2021)