



C.R.P.(PD).No.1775 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE **S.KANNAMMAL**

C.R.P.(PD).No.1775 of 2017

and

C.M.P.Nos.8333 & 11577 of 2017

[Video Conferencing]

Parampath Anupama

... Petitioner

vs.

1.T.A.Vijayalakshmi

2.Ramakrishnan

3.Mahe Municipality

... Respondents

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 29.04.2017 in I.A.No.8 of 2017 in O.S.No.12 of 2016 on the file of the District Munsif Court, Mahe.

For Petitioner : Mr.R.Krishna Prasad

For R1 & R2 : Mrs.G.Sumithra

For R3 : Notice served

ORDER

This Civil Revision Petition has been filed by the petitioner against the order passed in I.A.No.8 of 2017 in O.S.No.12 of 2016 dated 29.04.2017 on the file of the District Munsif Court, Mahe.



2.The facts of the case, in a nutshell, are that the petitioner is the plaintiff and the respondents are the defendants in the suit in O.S.No.12 of 2016. The suit was filed for permanent prohibitory injunction and for mandatory injunction. The 3rd and 1st defendants have filed the above application in I.A.No.8 of 2017 seeking permission to appoint an emergent Advocate Commissioner to inspect the plaint “A” Schedule property with the assistance of photographer to take photos of the present lie, nature of the plaint “A” Schedule property. Since the said application was allowed by the impugned order, dated 29.04.2017, this Civil Revision Petition has been filed by the 1st respondent.

3.Heard the learned counsel for the petitioner as well as the learned counsel for the 1st and 2nd respondents and perused the materials placed on record.

4.This Civil Revision Petition has been preferred against the order passed by the learned District Munsif, Mahe, by allowing the petition by appointing Advocate Commissioner to inspect the plaint “A” Schedule property with the assistance of the photographer to take photos of the present lie, nature of the plaint “A” schedule property and prepared a Sketch and Plan



C.R.P.(PD).No.1775 of 2017

and take photos of the physical features. Aggrieved by the said order, this present Civil Revision Petition has been filed by the petitioner.

5.The learned counsel for the petitioner would submit that the main suit in O.S.No.12 of 2016 has been filed by the petitioner herein seeking permanent prohibitory injunction restraining the defendants from encroaching the plaint “A” Schedule property and from constructing any Water Channel through it and from diverting the natural flow of rain water through the plaint “B” Schedule Water Channel now in existence and also for mandatory injunction and to direct the defendants to remove the obstruction caused in the “B” Schedule Water Channel and to recoup the plaint “B” Schedule Water Channel to its original possession. It is further submitted that Commission Application was taken out by the petitioner herein in I.A.No.60 of 2016 and Advocate Commissioner was appointed and the Advocate Commissioner has also filed his Report after the inspection of the suit property with the help of the Surveyor. It is further submitted that raising some allegations against the Commissioner, the respondent herein filed a petition for appointment of Advocate Commissioner. Admittedly, no objection was filed for the Commissioner's Report in I.A.No.60 of 2016.



6.The learned counsel for the petitioner would submit that the Trial

Court has not taken into account of the fact that the respondent herein had already filed an application for setting aside the Report filed by the Advocate Commissioner and the same is still pending. It is further submitted that the Trial Court ought to have taken into account of the fact that without scrapping or deciding the validity of the first Advocate Commissioner's Report, second Advocate Commissioner cannot be appointed. It is also submitted that the Trial Court has not taken into account of the fact that the conduct of the respondents in filing two applications claiming the very same relief only with a view to prolong the proceedings. It is further submitted that the Trial Court erred in not taken into account of the fact that the respondents do not have any right to block the natural course of water channel in the “B” Schedule property by constructing a wall in the Eastern side of the property in order to cause hindrance to the petitioner's peaceful possession and enjoyment of the “A” Schedule property.

7.The learned counsel for the petitioner would rely upon the following citations: *(1) 1996 SCC Online MAD 54; (2) 2006 (2) CTC 54; (3) 2009 (2) CTV 205.*



8.Further, the learned counsel for the petitioner submitted that the Trial Court if comes to the finding that the earlier Commissioner's Report is not satisfactory and needs further enquiry, the Trial Court can appoint second Commissioner.

9.Hence, until the Trial Court is dis-satisfied with the proceedings and Report of the Commissioner who was earlier appointed it will not be proper to ignore the earlier Commissioner's Report and not directing even further enquiry and without scrapping of the earlier Report, cannot appoint fresh Advocate Commissioner. Since the Trial Court without considering the pendency of the petition for setting aside the Report of the Advocate Commissioner, erroneously allowed the petition for appointment of Advocate Commissioner and the same has to be set aside.

10.The learned counsel for the respondents on the other hand submitted that the impugned order passed needs no interference.

11.In the facts and circumstances of this case, it is very clear that there is no finding or reason set out in the impugned order to ignore the earlier



C.R.P.(PD).No.1775 of 2017

Commissioner's Report. Without even directing for further enquiry and without scrapping of the earlier Report, the order appointing fresh Advocate Commissioner is unwarranted. Further, when the respondent herein has every opportunity to cross examine the Advocate Commissioner with regard to his Report, the impugned order for appointing fresh Advocate Commissioner without assigning acceptable reason is liable to be set aside.

12.In the result, this Civil Revision Petition is allowed. No costs.

Consequently, the connected miscellaneous petitions are closed.

25.11.2021

ssi

Index:Yes/No

Internet:Yes/No

Speaking Order/Non-Speaking Order

To:

1.The District Munsif Court, Mahe.

2.The Section Officer,
V.R. Section, High Court of Madras.



WEB COPY



C.R.P.(PD).No.1775 of 2017

S.KANNAMMAL,J.

ssi

C.R.P.(PD).No.1775 of 2017 and
C.M.P.Nos.8333 & 11577 of 2017

25.11.2021