

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.K. ILANTHIRAIYAN

**C.R.P.PD.No.3116 of 2017
and
C.M.P.No.15089 of 2017**

P.K.Ponnusamy ... Petitioner

-Vs-

K.P.Mani ... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.01.2017 made in I.A.No.642 of 2016 in O.S.No.148 of 2011 on the file of District Munsif, Paramathi.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondent : Mrs.T.Dhanyakumar

WEB COPY

ORDER

The present Civil Revision Petition is directed as against the fair and decreetal order dated 19.01.2017 made in I.A.No.642 of 2016 in O.S.No.148 of 2011 on the file of District Munsif, Paramathi thereby dismissing the petition for reappointment of Advocate Commissioner to inspect the suit property.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for a easementary right.

3. On the application filed by the respondent, the Advocate Commissioner was immediately appointed to note down physical features of the suit property. On receipt of the warrant, the Advocate Commissioner has issued notice to both parties. He made an inspection and filed a report with a rough sketch. Thereafter, the petitioner filed a petition to reappointment of another Advocate Commissioner to revisit the suit property to note down the physical features and the same was dismissed. Aggrieved by the same, the present Civil Revision Petition is filed.

4. The learned counsel for the petitioner would submit that the report filed by the Advocate Commissioner is not clear in respect of the space between the petitioner and the respondent property.

5. According to the Advocate Commissioner, there is a gap between the petitioner's house and the respondent's house and he failed to note down the measurement in respect of the gap between both the parties. Therefore, he prayed for reappointment of another Advocate Commissioner to note down both suit property.

6. Per contra, the learned counsel for the respondent would submit that the suit of the year 2011 and immediately, Advocate Commissioner was appointed and a report was filed on 16.12.2011. In fact, the Advocate Commissioner issued notice to the petitioner and he refused to receive the same. In the year 2013, the petitioner filed his written statement and after trial in the year 2016, the petitioner filed a present petition for reappointment of the Advocate Commissioner to revisit the suit property. He

further submitted both side evidences were closed and the matter was posted for arguments.

7. Heard Mr.T.L.Thirumalaisamy, learned counsel for the petitioner and Mr.T.Dhanyakumar, learned counsel for the respondent.

8. The petitioner is a defendant in the suit filed by the respondent for easement Act. On a perusal of the Advocate Commissioner's Report, it is seen that he issued notice to the petitioner and he refused to receive the same. Advocate Commissioner visited the suit property on 20.09.2011 and construction was going on there when the Advocate Commissioner visited the suit property on 14.12.2011 and completed the construction and closed the window of the respondent herein. Therefore, no purpose would be served by appointing another Advocate Commissioner to revisit the suit property. Therefore, this Court finds that there is no irregularity to interfere with the order of the trial Court below. However, the petitioner is at liberty to file objections on the Advocate Commissioner's Report within a period of

two weeks from the date of receipt of a copy of this order. Accordingly, this Civil Revision Petition is dismissed. No costs.

02.03.2021

Index: Yes / No
Speaking order / Non speaking order
kmm

To

The District Munsif, Paramathi.



WEB COPY

G.K. ILANTHIRAIYAN, J.

kmm



C.R.P.PD.No.3116 of 2017

WEB COPY **02.03.2021**