



C.R.P.(PD)No.2309 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2309 of 2015
and M.P.No.1 of 2015

E.Subbian

... Petitioner

Vs.

1.R.Subbian

2.S.Rangammal

3.R.Ponnammal

4.Aaruvatthi

5.E.Kannappan

6.Rajathee

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 10.11.2014 made in I.A.No.3308 of 2014 in O.S.No.2244 of 2014 on the file of I Additional District Munsif Court, Coimbatore.

1/7



C.R.P.(PD)No.2309 of 2015

For Petitioner : Ms.Janani
for M/s.Sai Bharath and Ilan
For R1 to R4 : Mr.S.Kadarkarai

ORDER

(The matter is heard through “Video Conferencing”)

Civil Revision Petition is filed against the order dated 10.11.2014 made in I.A.No.3308 of 2014 in O.S.No.2244 of 2014 on the file of I Additional District Munsif Court, Coimbatore.

2.The petitioner is 1st defendant, respondents 1 to 4 are the plaintiffs and respondents 5 and 6 are the defendants 2 and 3 in O.S.No.2244 of 2014 on the file of I Additional District Munsif Court, Coimbatore. The respondents 1 to 4 filed the said suit for demarcation and fixing the boundaries of the suit property after measuring entire properties comprised in survey No.158 and also the suit property covered under the sale deed dated 30.08.1967 and for permanent injunction. Along with the suit, the respondents 1 to 4 filed I.A.No.3308 of 2014



C.R.P.(PD)No.2309 of 2015

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under Order XXVI Rule 9 of C.P.C. to appoint an Advocate Commissioner to measure the entire land comprised in survey No.158 with the help of a qualified surveyor to demarcate the suit property and file a report with plan. The learned Judge admitted the suit on 10.11.2014 and took I.A.No.3308 of 2014 on the same day, appointed one Mr.S.Veerapandian, as Advocate Commissioner to visit the petition mentioned property and to measure the entire land comprised in survey No.158 with the help of a qualified surveyor to demarcate petitioner's property and file his report along with plan.

3.Against the said order dated 10.11.2014 made in I.A.No.3308 of 2014 in O.S.No.2244 of 2014, the petitioner has come out with the present Civil Revision Petition.

4.The learned counsel appearing for the petitioner contended that without issuing any notice to the petitioner and respondents 5 and 6, the learned Judge has appointed an Advocate Commissioner. The learned



C.R.P.(PD)No.2309 of 2015

Judge has not given any reason for appointment of Advocate Commissioner and the order of the learned Judge is non-speaking order. By appointing an Advocate Commissioner, the learned Judge has decided the suit itself, as the prayer sought for in the suit is only for demarcation and fixing the boundaries. The learned Judge decided the suit without issuing summons and notice to the petitioner and respondents 5 and 6 and prayed for allowing the Civil Revision Petition.

5.Mr.S.Kadarkarai, the learned counsel appearing for the respondents 1 to 4 contended that the petitioner and the respondents 5 and 6 were trying to encroach and interfere with the possession and enjoyment of the suit property of the respondents 1 to 4. In view of urgency of the matter, the learned Judge has appointed Advocate Commissioner to measure the property. The order of the learned Judge appointing Advocate Commissioner is valid, there is no reason to interfere with the said order of the learned Judge and prayed for dismissal of the Civil Revision Petition.



C.R.P.(PD)No.2309 of 2015

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6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials on record.

7.From the materials on record, it is seen that the suit is for demarcation and for fixing the boundaries of suit property and for permanent injunction restraining the petitioner and the respondents 5 and 6 from interfering with the possession and enjoyment of the respondents 1 to 4. Along with the suit, the respondents 1 to 4 filed I.A.No.3308 of 2014 for appointment of an Advocate Commissioner to measure the entire land comprised in survey No.158 with the help of a qualified surveyor to demarcate the property and to file report along with plan. The learned Judge without ordering any notice to the petitioner and respondents 5 and 6, appointed Advocate Commissioner. From the impugned order of the learned Judge, it is seen that except stating that "Heard. Perused records.", the learned Judge has not given any reason for appointment of Advocate Commissioner exparte. In view of the fact that



C.R.P.(PD)No.2309 of 2015

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the impugned order passed by the learned Judge is without issuing notice to the petitioner and the respondents 5 and 6 and without giving any reason, the impugned order dated 10.11.2014 made in I.A.No.3308 of 2014 in O.S.No.2244 of 2014 is liable to be set aside and is hereby set aside. I.A.No.3308 of 2014 in O.S.No.2244 of 2014 is remanded to the trial Court for fresh consideration. The learned Judge is directed to give an opportunity to the petitioner and the respondents 5 and 6 to put forth their case and after hearing the parties, pass orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

8. With the above directions, the Civil Revision Petition is allowed.

No costs. Consequently, connected Miscellaneous Petition is closed.

21.01.2022

Index : Yes/No
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C.R.P.(PD)No.2309 of 2015

V.M.VELUMANI,J.

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To

I Additional District Munsif
Coimbatore.

C.R.P.(PD)No.2309 of 2015
and M.P.No.1 of 2015

21.01.2022

7/7