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C.R.P(PD).No.3721 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD). No.3721 of 2017
and C.M.P.No. 17362 of 2017

K.P.Arumugam

... 9th Respondent/9th Defendant/Petitioner
Vs.

1. S.Amuthavalli

...Petitioner/Plaintiff/1st Respondent

2. V.Loganayagi

3. V.Vanitha

4. V.Parimala

5. Dr.V.Annapoorani

6. Dr.V.Shiyam Sundar

7. Akila Periyasamy

8. A.P.Vidya

9. K.P.Sathish

10. The President

Thottipalayam Panchayat,
Thottipalayam Post,
Bhavani Taluk

... Respondents 1 to 8 & 10/Defendants 1 to
8 & 10/ Respondents 2 to 10

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.1133 of 2015 in O.S.No.344 of 2013 dated 05.10.2016 passed by the Principal District Munsif Court at Bhavani.

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For Petitioner : Mr.P.Valliappan

For Respondents : No appearance for R1 to R9

:Mr.M.Vadivelu Deenadayalan for R10
Additional Government Pleader

ORDER

This civil revision petition has been filed against the order passed by the learned Principal District Munsif Judge in I.A.No.1133 of 2015 in O.S.No.344 of 2013, whereby, the prayer of the plaintiff for appointment of Advocate Commissioner to measure the suit property and to file a report noting down the physical features, has been allowed vide order dated 05.10.2016.

2. The revision petitioner herein is the 9th defendant in the suit. It is submitted by the learned counsel for the revision petitioner/9th defendant that earlier in the suit, an Advocate Commissioner was appointed and the said Advocate Commissioner has filed his report and plan. In such circumstances, there is no valid reason for the plaintiff seeking for



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reissuance of warrant to Advocate Commissioner in his application, therefore, the order of the learned Judge allowing the petition to reissue warrant to the Advocate Commissioner to note down the physical features once again does not serve the purpose, hence, sought to set aside the order dated 05.10.2016 in I.A.No.1133 of 2015 in O.S.No.344 of 2013.

3. On the other hand, learned counsel for the 1st respondent/plaintiff would submit that as per the terms of compromise decree entered between petitioner's mother in law and others, a common cart track has been provided. In that cart track, a pipe line was existed in the Well and the same had been removed and shifted without the consent and permission of the petitioner. The said deviation of the pipeline was made only by the petitioner and respondents 2 to 9 herein .

4. The petitioner already filed a petition in I.A.No.825/2014 for appointment of Advocate Commissioner to note down the physical features and the newly shifted pipe line by digging the land situated at R.S.No.436/2 and to find out the old cement pipe line & PVC pipe line. But the problem



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was not solved in the matter after Commissioner's visit. Hence, the petitioner filed a petition to reappoint the Advocate Commissioner and to reissue the warrant in order to restore the pipe line to its original position.

5. After going through the petition, the Trial Court came to the conclusion that if the existence of pipe line and cart track is ascertained, then the issue between the plaintiff and defendant may be solved. In order to solve this issue, the Trial Court granted the relief sought by the plaintiff to measure the suit property with the help of VAO and Surveyor. Hence, the Trial Court appointed the same Advocate Commissioner in I.A.NO.825/2014 to revisit the property along with V.A.O. and Surveyor, after giving due notice to both sides and to measure the said suit property. He was also directed to file a report and plan after noting down the physical features.

6. After hearing the arguments of both the learned counsel, this Court finds that the issue between the petitioner and the respondents had not yet solved in this matter. Therefore, the findings of the learned Judge



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directing the Advocate Commissioner to revisit the property along with V.A.O. and Surveyor is well founded, which does not require any interference by this Court.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

25.01.2023

msv
Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order

To
1. The Principal District Munsif Court, Bhavani.

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



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J.NISHA BANU,J.

msv

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