



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED :10.01.2022  
CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA  
C.R.P (MD) No.850 of 2017

WEB COPY

Pakir Mohammed

... Petitioner/Respondent/Defendant

Vs.

Kathun Beevi

... Respondent/Petitioner/Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the order dated 03.01.2017 in I.A.No.271 of 2016 in O.S.No.29 of 2016 on the file of the District Munsif Court, Devakottai and set aside the same.

For Petitioner : Mr.J.Anandkumar

For Respondent : No appearance

ORDER

Challenging the appointment of an Advocate Commissioner, the revision petitioner / defendant is before this Court.

2. The brief facts are as follows.

The suit in OS.No.29/2016 was filed by the plaintiff for declaration that the B schedule property belongs to her and for recovery of possession from the defendant. Along with the plaint, the plaintiff has filed IA.No.271/2016 for appointment of an Advocate Commissioner to note down the physical features and to take photographs of the constructions put up on the suit property and submit a report. The defendant had filed a written statement *inter alia* contending that an earlier suit in OS.No.107/2014 had been filed by the defendant against the plaintiff herein and in the said petition, an Advocate Commissioner had been appointed, who had noted down the encroachment made by the plaintiff herein, who was the defendant in the said suit. The defendant herein had opposed the appointment of Advocate Commissioner on the ground that in the earlier suit in OS.No.107/2014, an Advocate Commissioner had been appointed, who had also submitted a detailed report. Therefore, there is no necessity to once again appoint an Advocate Commissioner. However, the learned District Munsif, Devakottai, allowed the said application on the ground that the defendant has neither raised any objection that the boundaries of the B schedule property has been wrongly described, nor has he filed any document to counter the said allegation. The learned Judge held that since the suit was filed in respect of the encroachments made in the suit



property, there was necessity for appointment of Advocate Commissioner. Challenging the same, the revision petitioner is before this Court.

3. Mr.J.Anandkumar, learned counsel appearing on behalf of the petitioner would point out that even in the instant suit, the respondent / plaintiff has clearly stated that in the earlier suit, an Advocate Commissioner had been appointed, who had noted down the physical features of the suit property on 05.03.2015 and submitted a report. He would therefore submit that there was no necessity to once again appoint an Advocate Commissioner. He would submit that the learned District Munsif, Devakottai has not at all considered this objection of the defendant and the order is totally silent about the same.

4. This matter has been posted on several dates and the respondent counsel has not appeared. Therefore, this Court proceeded to hear the counsel for the petitioner and pass orders on the basis of his arguments and records.

5. Admittedly, in the earlier suit in OS.No.107/2014, an Advocate Commissioner was appointed, who had visited the property along with the Head Surveyor and noted down the obstructions made in the suit property by the plaintiff and his other friends. This report has been filed by the Advocate Commissioner and without considering the same, the plaintiff seeks to have the Commissioner appointed in the instant suit for discharging the very same function. The learned Judge has not even considered this defence in his order. An Advocate Commissioner has been appointed and report is also accepted by the plaintiff himself in the instant suit and the appointment of the Advocate Commissioner and his report is set out as one of the cause of action in the instant suit. In these circumstances, there is no necessity to once again appoint an Advocate Commissioner to inspect the very same property. In the above circumstances, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed. The order dated 03.01.2017 in I.A.No.271 of 2016 in O.S.No.29 of 2016 on the file of the District Munsif Court, Devakottai is set aside.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Mbi



The District Munsif Court, Devakottai.

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+1 CC to M/s.J.ANANDAKUMAR, Advocate ( SR-1155[F] dated 11/01/2022 )

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nsn(CO)

TR(07.02.2022) 3P 3C