



C.R.P.(MD).No.358 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.358 of 2018

and

C.M.P(MD) No.1614 of 2018

1. Rajangam
2. P.Muralidaran
3. Sathiyaseelan

... Petitioners/Respondents 1 to 3
Defendants 1 to 3

-vs-

1. C.Sivakami
2. Perumalsamy

... 1st Respondent/Petitioner/Plaintiff
... 2nd Respondent/4th Respondent/
4th Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 26.09.2017 made in I.A.No. 504 of 2017 in O.S.No.217 of 2017 on the file of the Subordinate Court, Uthamapalayam.

For Petitioners : Mr.R.Saravanan

For Respondents : Mr.R.Suriya Narayanan – for R1
: No appearance – for R2



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ORDER

The present Civil Revision Petition has been filed by the petitioners/defendants 1 to 3 under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 26.09.2017 made in I.A.No.504 of 2017 in O.S.No.217 of 2017 on the file of the Subordinate Court, Uthamapalayam.

2. The revision petitioners are the defendants before the trial Court. The first respondent herein has filed the suit for the relief of permanent injunction and other reliefs.

3. It appears that, along with the plaint, the first respondent has filed an application for appointment of an Advocate Commissioner in I.A.No.504 of 2017. Wherein, the learned trial Judge passed an ex parte order appointing the Advocate Commissioner vide order dated 26.09.2017. Against which, the instant Civil Revision Petition has been filed.

4. The very genesis and grievance raised by the learned counsel for the revision petitioners is that the learned trial Judge has not given an opportunity



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to the revision petitioners to put forth their stand, before appointing the Advocate Commissioner, and would also further emphasised before this Court that even the order, dated 26.09.2017 do not manifest or reflect the application of mind as there is no reason for allowing the application in exparte. He also would submit that from the order he could not infer anything as to why the Commissioner was appointed.

5. However, the learned counsel appearing for the first respondent herein would submit that, the learned trial Judge after considering the pleadings and arguments, only to find out the poramboke land and the patta land, has appointed the Advocate Commissioner. Therefore, there is no illegality or infirmity in the order. Hence, he prayed to dismiss the Civil Revision Petition.

6. I have carefully considered the submissions made by the either side learned counsel.

7. The learned trial Judge in the order dated 26.09.2017 stated as follows:



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“Heard Advocate Mr.S.Murugesan is appointed as Advocate Commissioner. His remuneration is fixed at Rs.3500/-. The petitioner has to pay the Commissioner Report Fee directed to him and has to submit a memo in to Court. The Commissioner Report directed to inspect the suit property along with the help of a Qualified Surveyor after giving notice to both side and he has to inspect measure the suit property and note down the Physical Feature and has to submit his report with plan into Court by 13.10.2017. ”

8. From perusing the above order, this Court could not infer any reason as to why the exparte Commission was necessitated immediately on filing of the suit. The order do not put forth the reason for appointment of Advocate Commissioner. Therefore, the inexorable conclusion would only be to set aside the order dated 26.09.2017, by allowing this Civil Revision Petition. However, considering the nature of suit and other attending material circumstances, it is a fit case to remit this matter before the trial Court for fresh consideration. Therefore, the matter is remitted back to the trial Court, with the direction to dispose the commission application afresh according to law, after giving due opportunity to either side. Considering the fact that this



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case is of the year 2017, the learned trial Judge is directed to dispose of the Commission application within a month, from the date of receipt of the copy of this order.

9. In the result, this Civil Revision Petition stands allowed as indicated above. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

06.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Subordinate Court,
Uthamapalayam.



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C.KUMARAPPAN,J.

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