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C.R.P.(PD).No.2361 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.2361 of 2023 &

C.M.P.No.14604 of 2023

K.Mani

... Petitioner

-Versus-

1.P.Venkatachalam

2.V.Thangavel

3.R.Karpagam

4.S.Amutha

5.V.Sumathi

6.Ramasamy

7.Prabakaran

8.Udhayakumar

... Respondents

Revision filed under Article 226 of the Constitution of India to set aside the fair and final order dated 28.04.2023 made in I.A.No.7 of 2023 in O.S.No.117 of 2013 passed by the Additional District Munsif Court, Tiruchengode.

For Petitioner : Mr.B.Jawahar

For Respondents : No appearance

ORDER

The plaintiff is the civil revision petitioner. He presented a suit in O.S.No.117 of 2013 on the file of the Additional District Munsif Court at



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Thiruchengode seeking for the relief of declaration of his title and for permanent injunction. Along with the suit, he seems to have moved an application for appointment of Advocate Commissioner in I.A.No.329 of 2013. The said application was allowed and an Advocate Commissioner was appointed. The said commissioner had visited the suit schedule mentioned property and submitted a plan and a report.

2. After the visit of the Advocate Commissioner and submission of the report, the defendants 6 to 8 were impleaded in terms of the order passed by the learned Judge in I.A.No.99 of 2015 dated 30.11.2018. The defendants who have been newly impleaded entered appearance and filed a detailed written statement disputing the report of the Commissioner. This constrained the plaintiff to take out another application for appointment of Advocate Commissioner in I.A.No.7 of 2023 in O.S.No.117 of 2013. The learned Additional District Munsif Court at Tiruchengode dismissed the petition on 28.04.2023. Hence, this revision.

3. Notice was ordered in the revision and the respondents have been served. They have not entered appearance through a counsel nor did they



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present themselves in person to oppose the same.

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4. I heard Mr.B.Jawahar for the petitioner.

5. Mr.B.Jawahar would submit that an application was filed for appointment of Advocate Commissioner, since the sixth defendant had disputed the validity of the report filed by the Advocate Commissioner appointed in pursuance of the order in I.A.No.329 of 2013. Therefore, he was constrained to file the present petition to appoint the advocate commissioner afresh.

6. In a suit, an Advocate Commissioner is appointed to note down the physical features of the property or for the like functions, in order to enable the court to elicit necessary details on matters in issue. In the present case, an Advocate Commissioner had been appointed in I.A.No.329 of 2013 and he had also submitted a report and a plan. Unless and until, the report of the Advocate Commissioner is set aside or scrapped, the issue of appointing another Advocate Commissioner for the same purpose does not arise. That circumstance has not arisen in the present case.

7. The report of the Advocate Commissioner is on record. The Advocate



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Commissioner is not appointed for the purpose of supporting the case of the plaintiff or that of the defendant. In terms of the warrant, he is the eyes and ears of the court and submits a report which the court would appreciate at the time of pronouncing the judgment. If more than one Advocate Commissioner is appointed in a suit, it would result in utter confusion. Therefore, on the short ground that the second Advocate Commissioner cannot be appointed for the same purpose without scrapping the previous report, this revision has to be dismissed.

8. I do not find any error in the order of the learned District Munsif, dismissing the application. Insofar as the submission of Mr.B.Jawahar that the sixth defendant had disputed the Advocate Commissioner's report is concerned, I have to recall the principle that the report of the Advocate Commissioner can be disputed either by filing an objection or by summoning and examining the Advocate Commissioner under Oath before the Court. If both the procedures have not been followed, then it is for the court at the time of marshalling the evidence before pronouncing the judgment to decide the validity of the report. For the mere fact that the party has opposed an application does not mean a fresh Commissioner must be appointed.



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WEB COPY 9. In view of the above, this civil revision petition is dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Additional District Munsif Court, Tiruchengode.



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V.LAKSHMINARAYANAN, J.

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