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C.R.P(PD).No.3085 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P(PD).No.3085 of 2022

and

C.M.P.No.16588 of 2022

K.R.Palanisamy

... Petitioner

Vs.

Mani @ Shanmugam

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.06.2022 made in I.A.No.01 of 2019 in O.S.No.86 of 2014 on the file of the District Munsif, Perundurai by allowing this Civil Revision Petition.

For Petitioner : Mr.C.Ramaraj

For Respondent : Mr.V.S.Kesavan

ORDER

The present Civil Revision Petition is filed against the order passed in I.A.No.01 of 2019 in O.S.No.86 of 2014 on the file of the District Munsif Court, Perundurai dated 16.06.2022 whereby, the learned District Munsif had scrapped the report filed by the Advocate Commissioner on 06.06.2014.



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2. O.S.No.86 of 2014 was filed by the revision petitioner/plaintiff for the purpose of declaration and permanent injunction against the respondent/defendant with respect to a right in the suit cart track.

3. In the said suit, he took out an application for appointment of an Advocate Commissioner in I.A.No.397 of 2014. The original suit was numbered on 02.06.2014 and on the very date, the said application was also moved. The learned District Munsif, Perundurai was pleased to appoint an Advocate Commissioner on the very date. The Advocate Commissioner, who visited the suit property, also submitted a final report on 06.06.2014.

4. Though several allegations have been made against the Advocate Commissioner with respect to his relationship with the counsel for the petitioner/plaintiff, I do not find it necessary to probe into those issues as I am inclined to uphold the order of the learned District Munsif, Perundurai on the sole ground that the Advocate Commissioner has violated the fundamental tenets of law.



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5. Under Order XXVI Rule 10 of the Code of Civil Procedure, 1908, the Court has power to appoint an Advocate Commissioner. The power to appoint an Advocate Commissioner can also be done *ex parte*. Though the Advocate Commissioner has the power to visit the suit property and make a local inspection, it is the duty of the Advocate Commissioner to put the opposite party on notice with respect to his visitation. In other words, it is the duty of the Advocate Commissioner to issue notice to the opposite party, and only thereafter proceed with the inspection. In this case, the Advocate Commissioner was put in the witness box and cross-examined by the respondent/defendant herein. During the time of cross-examination, it came to light that the Advocate Commissioner did not give a notice to the respondent/defendant herein prior to his inspection.

6. While the Court demands the executive authorities to comply with the principles of natural justice, it is also its duty to comply with the same. Unfortunately, in this case, the Advocate Commissioner did not issue a notice to the respondent/defendant about his inspection of the suit property. On this ground, his report will have to be scrapped. Hence, I do



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not find any reason to interfere with the order of the learned District Munsif, Perundurai for scrapping the Advocate Commissioner's Report.

7. The order cannot stop here. It will not serve the ends of justice. I am inclined to direct the learned District Munsif, Perundurai to take up I.A.No.397 of 2014 and appoint a fresh Advocate Commissioner. The trial Court has to ensure that Mr.R.Balu, the Advocate Commissioner appointed in I.A.No.397 of 2014 is not re-appointed.

8. With the above direction, this Civil Revision Petition is dismissed. The cost in the Civil Revision Petition will follow the result in the suit. Connected Civil Miscellaneous Petition is closed.

15.04.2024

Index : Yes / No
Internet : Yes / No
Speaking Order / Non-Speaking Order
Neutral Citation : Yes / No

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To

The District Munsif Court,
Perundurai.



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V.LAKSHMINARAYANAN, J.

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