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C.R.P.No.4146 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.4146 of 2019 and
C.M.P.No.27154 of 2019

Sekar

... Petitioner

Vs.

1.Vasantha
2.Sivaraman

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 09.07.2019 made in I.A.No.1439 of 2018 in O.S.No.334 of 2012 on the file of the District Munsif Court, Jayankondam.

For Petitioner	: M/s.M.Senthil Vadivu
For Respondents	: No appearance

ORDER

Aggrieved by the order dismissing the petition filed by the petitioner seeking re-open of the interlocutory application for appointment of Advocate



Commissioner, the petitioner has come up with this revision.

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2. Heard the learned counsel for the petitioner. Though the respondents are served and their names are appeared in the cause list, there is no representation on behalf of the respondents.

3. The petitioner filed a suit for declaration of title, recovery of possession and mandatory injunction to remove the super structure put up by the respondent in the portion of the suit property.

4. Pending the suit, the petitioner filed an application for appointment of Advocate Commissioner in I.A.No.1065 of 2012 to measure the suit property with reference to the title deeds and find out the exact measurement of the super structure put up by the respondent by encroaching the portion of the suit property. The Court below initially appointed the Advocate Commissioner but the Commissioner has not received warrant and executed the same for long time. Hence, the said petition was closed on 07.02.2018. Therefore, the petitioner filed the present application seeking to re-open the



earlier petition for appointment of the Advocate Commissioner. In the affidavit filed in support of the petition, it was stated by the petitioner that Advocate Commissioner could not visit the property due to non-availability of Surveyor. However, on perusal of the records, it was found that Advocate Commissioner not even received the warrant. It was also observed by the Court below that even after closure of the earlier petition for appointment of Advocate Commissioner, the petitioner has not taken immediate steps seeking re-open of the earlier petition.

5. The suit is for declaration of title, recovery of possession and for mandatory injunction to remove the super structure put up by the respondent. The appointment of Advocate Commissioner was sought for by the petitioner to find out the exact measurement of the super structure put up by the respondent in the portion of the suit property. Since the petitioner is seeking mandatory injunction to remove the super structure put up by the respondent by encroachment, the exact measurements of the super structure to be removed is absolutely necessary. Therefore, the report of the Advocate Commissioner would certainly help the Court to decide the controversy between the parties in



an effective manner.

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6. In view of the fact that the petitioner has not taken any steps for more than five years to measure the suit property, this Court is inclined to impose cost on the petitioner while setting aside the order passed by the Court below. Therefore, the impugned order is set aside and the Civil Revision Petition stands allowed on condition that the petitioner make a payment of Rs.5000/- to Taluk Legal Service Authority, Jayankondam within a period of three weeks from the date of receipt of a copy of this order. In case, the petitioner failed to pay the amount within a time stipulated, the Civil Revision Petition shall automatically stands dismissed. On payment of the amount as directed, the Court below is directed to re-open the earlier petition and appoint an Advocate Commissioner for local inspection as prayed for.

7. With the above directions, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2024

Index : Yes / No

Internet : Yes / No

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C.R.P.No.4146 of 2017

To

The learned District Munsif, Jayankondam.



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C.R.P.No.4146 of 2019

S.SOUNTHAR, J.

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CRP.No.4146 of 2019
and
C.M.P.No.27154 of 2019

11.01.2024