

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF KANCHEEPURAM
KANCEEPURAM DISTRICT**

**PRESENT: Tmt.R. Rajeswari,B.Com.,L.L.M.,
Principal District Munsif, Kanchipuram**

On Monday, this the 20th day of March 2023

IA.No.6 of 2022
In
O.S.No.73 of 2022

Rajasekar ...Petitioner/ Defendant

/Versus/

Preetha ...Respondent/Defendant

This petition has come up on 20.02.2023 for final hearing before me in the presence of Thiru.V.Kirubanandham, advocate for the petitioner and Thiru.E.L.Kannan, advocate for the respondent and upon hearing the arguments of both sides and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:

ORDER

1. This petition is filed under Section 151 of CPC to stay the proceeding of the Advocate Commissioner, who was appointed by this court dated 01.09.2022.
2. The case of the petitioner as stated in his affidavit is as follows:-

The petitioner submitted that the above suit and IA.No.2/2022 as well as IA.No.3/2022 filed by the respondent for declaration and

permanent injunction against the petitioner/defendant and the same was posted on 01.09.2022 for filing counter and written statement on the petitioner side. On that day, the petitioner was affected by Viral fever and taking native treatment in his village. Whiles, the petitioner could not able to file counter in the above two interlocutory applications before this court on 01.09.2022. Recently the petitioner came to know that on 01.09.2022 that this court was please to pass exparte order against the petitioner in IA 3/2022, for which counter not filed by the petitioner. Now, the petitioner filed the counter in the application of Order 26 Rule 9 of CPC and the application for set aside the exparte order dated 01.09.2022.

3. Later this court was appointed an advocate commissioner Miss.Divya, Advocate, Kanchipuram on the basis of exparte order passed on 01.09.2022 and the advocate commissioner had given the notice to both counsel for inspect the suit property on 15.09.2022, Subsequently, the 'A' Schedule of the petition and plaint rough sketch are very defect in I.A.3/2022. In this Juncture, the Advocate Commissioner cannot be appointed to inspect the suit property while, so it is just and necessary to be stayed the proceedings of the Advocate Commissioner. Hence this petition.

4. The respondent filed his counter and the gist of the same is as follows:-

The respondent submitted that The respondent submitted that the respondent has filed the above suit for declaration and recovery of possession and also filed two I.A.No.2/2022 and 3/2022, seeking appointment of an advocate commissioner and interim application and this court has given sufficient opportunity to the petitioner to file the counter.

5. Since the petitioner has not filed the counter on 01.09.2022 this court passed an exparte order against the petitioner and appointed Ms.Divya as an advocate commissioner and the warrant has been also issued to the court commissioner and on 15.09.2022, the commissioner has also given notice.
6. The petitioner has come up with the present petitions with a false and unsustainable fact by stating that the 'A' schedule of the petition and plaint Rough Sketch are very defected so the proceedings of the Advocate Commissioner have to be stayed and the said petitions filed by petitioner is not maintainable.
7. The petitioner filed the present petition only with an ulterior motive to drag the proceedings and by taking advantage of the fact that no interim injunction has been granted. continuing his illegal

construction in the suit property and the petition is liable to be rejected.

8. The petitioner did not state the particulars of the alleged defect in the petition filed by the respondent here. Without prejudice to the contentions, the respondent begs to submit that the respondent has mentioned correct survey number with subdivision number of the suit property and therefore there cannot be any defect in the description of the suit property as alleged in the petition. The advocate commissioner can very well be able to identify and inspect the suit property by the help of Surveyor and file his report. Hence this petition may be dismissed.
9. The point for consideration in this petition is whether this petition is to be allowed or not.

The Point:

10. Heard both sides and perused the records.
11. The petitioner is the defendant in the suit. The respondent filed the above suit for declaration and Permanent Injunction. The Respondent/plaintiff filed IA 3/2022 seeking to appoint an advocate Commissioner. Notice was ordered and the respondent entered the

appearance. However they failed to file the counter and the respondent set exparte on 01.09.2022. Now, the petitioner filed the counter in the application of Order 26 Rule 9 of CPC and the application for set aside the exparte order dated 01.09.2022.

12. Since, the petitioner has not filed the counter on 01.09.2022 this court passed an exparte order against the petitioner and appointed Ms.Divya as an advocate commissioner and the warrant has been also issued to the court commissioner and the commissioner has also given notice. The petitioner did not state the particulars of the alleged defect in the petition filed by the respondent.
13. The respondent has mentioned correct survey number with subdivision number of the suit property and therefore there cannot be any defect in the description of the suit property as alleged in the petition. Therefore, this Court is of the firm view that the present petition is deserves to be dismissed and accordingly the petition is dismissed.
14. In the result, this petition is dismissed. No costs.

Dictated to the steno-typist, who directly typed the same in her computer, corrected and pronounced by me in open court, this the 20th day of March 2023.

Sd/-R.Rajeswari
PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM