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C.R.P.(MD) No.2049 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.09.2023
Delivered on	27.09.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.2049 of 2023

and

C.M.P.(MD) No.10289 of 2023

Kasthoori

... Petitioner

Vs.

Dr.K.Balammal

... Respondent

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.03.2023 passed in I.A.No. 6 of 2022 in O.S.No.65 of 2022, by the Subordinate Court, Manamadurai, appointing second Advocate Commissioner.

For Petitioner : Mr.S.Ramu

For Respondent : Mr.J.Udhayakumar

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the impugned order dated 20.03.2023 passed in I.A.No.6 of 2022 in O.S.No.65 of 2022 on the file of the Subordinate Court, Manamadurai.



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2. The above suit in O.S.No.65 of 2022 was filed by the respondent for recovery of possession and for a mandatory injunction. During the pendency of the above suit, the respondent/plaintiff filed an application in I.A.No.3 of 2022 for appointment of an Advocate Commissioner to inspect the suit property and note down the physical features as per the petition plan and Sale Deed executed in favour of the respondent/plaintiff and also to note down the encroachments made by the petitioner/defendant. The Trial Court has allowed the said application and appointed the Advocate Commissioner.

3. The Advocate Commissioner visited the suit property and filed his report and plan. The respondent/plaintiff filed her objections to the report submitted by the Advocate Commissioner stating that the Advocate Commissioner measured the property without removing the iron fence put up by the petitioner/defendant and if the Advocate Commissioner has measured the suit property after removing the iron fence, the suit property would have been measured properly. The further objection is that in the sketch submitted by the Advocate Commissioner, the physical features noted down by the Advocate Commissioner is inconsistent and since the Advocate Commissioner failed to measure the property with the help of surveyor, there are deficiencies/discrepancies in the sketch and report.



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4. Hence, the respondent/plaintiff filed I.A.No.6 of 2022 to scrap the Advocate Commissioner's Report and the sketch annexed therewith and also to appoint a fresh Advocate Commissioner to inspect the suit property and note down its physical features and also to note down the encroachments made by the petitioner/defendant and to take photographs of the suit property and to file his report and plan. By the impugned order dated 20.03.2023, the said application was allowed by the Trial Court stating that some discrepancies/deficiencies are found in the Report of the Advocate Commissioner which would not be sufficient to resolve the dispute between the parties. Aggrieved by this, the petitioner/defendant has approached this Court by way of this Civil Revision Petition.

5. The learned counsel appearing for the petitioner/defendant would submit that it is a well settled principle that the second Advocate Commissioner can be appointed only in an extraordinary situation and same cannot be done in a routine manner in convenience of either of the parties. He would further submit that the Advocate Commissioner's Report is well within the scope of the order passed in the application in I.A.No.3 of 2022. The suit property was measured correctly and physical features were noted down as it is in the suit property.



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6. The learned counsel for the petitioner/defendant would further submit that the respondent/plaintiff and her counsel were present at the time of inspection made by the Advocate Commissioner and however failed to raise any objection at that point of time. He would further submit that no specific allegations made by the respondent/plaintiff in her application filed to scrap the Advocate Commissioner's Report. He would also submit that the Report filed by the Advocate Commissioner is clear and is well within the scope of the order passed in the application in I.A.No.3 of 2022 and therefore, the same cannot be said to be ambiguous.

7. The learned counsel for the petitioner/defendant would submit that the Report of the Advocate Commissioner can be struck off only when the same exceeds the limit of the order and when it is unable to help the Court to decide the issue between the parties in the suit. He therefore would submit that the impugned order passed by the Trial Court in I.A.No.6 of 2022 scrapping the Report of the earlier Advocate Commissioner is liable to be set aside.

8. On the other hand, the learned counsel appearing for the respondent/plaintiff would submit that the Advocate Commissioner failed to



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measure the suit property in accordance to the Sale Deed executed in favour of the respondent/plaintiff. He had failed to note down the actual features and the encroachments made by the petitioner/defendant and the Report submitted by the Advocate Commissioner is not clear and therefore, it has become necessary for scrapping the earlier Report and appointment of a fresh Advocate Commissioner is necessary to decide the issue between the parties. Therefore, there is no infirmity in the impugned order passed by the Trial Court which calls for no interference.

9. Heard on both side. Records perused.

10. The Trial Court in the impugned order dated 20.03.2023 passed in I.A.No.6 of 2022 in O.S.No.65 of 2022 has observed as follows:-

8) இவ்வழக்கில் வழக்கறிஞர் ஆணையர் தாக்கல் செய்துள்ள அறிக்கை மற்றும் வரைபடத்தினை காணும் பொழுது தாவா சொத்தினை நீதிமன்றம் அடையாளம் காணும் வகையில் தெளிவாக இல்லாமல் உள்ளது. நீதிமன்ற ஆணையர் வரைபடத்தில் மனுதாரர்/வாதி மற்றும் எதிர்மனுதாரர்/பிரதிவாதிக்கு பாத்தியப்பட்ட சொத்துக்கள் ஜி.ஆர் நம்பர் குறித்தும், அவர்களுக்கு பாத்தியப்பட்ட சொத்துக்களின் அளவீடுகள் குறித்தும் தாவா சொத்தின் அளவீடு குறித்தும் அறிக்கையில் அதன் இயற்கை தன்மை குறித்தும் அசல் வழக்கினை தீர்மானிப்பதற்கு இந்நீதிமன்றத்திற்கு உதவும் வகையில் தெளிவாக இல்லை என்பதும் அறிக்கை மற்றும் வரைபடம்



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காணும் பொழுது நன்கு அறியமுடிகிறது. எனவே அசல் வழக்கில் நீதிமன்றம் ஐ.ஏ.3/2022 மனுவில் பிறப்பிக்கப்பட்ட உத்தரவு பிரகாரம் வழக்கறிஞர் ஆணையரால் தாக்கல் செய்யப்பட்ட அறிக்கை மற்றும் வரைபடம் நீக்கறவு செய்து புதிதாக வழக்கறிஞர் ஆணையர் நியமனம் செய்யலாம் என்று இந்நீதிமன்றம் தீர்மானிக்கின்றது.

11. The Trial Court has recorded its dissatisfaction over the proceedings of the Advocate Commissioner and has found some discrepancies/deficiencies in the Report of the earlier Advocate Commissioner. Therefore, the Trial Court has scrapped the Report filed by the earlier Advocate Commissioner since it is not in satisfaction to resolve the dispute.

12. The Trial Court has appointed a fresh Advocate Commissioner after scrapping the Report filed by the first Advocate Commissioner. Since the suit was filed for recovery of possession and for mandatory injunction, stating that the petitioner/defendant has encroached into the property of the respondent/plaintiff, the Advocate Commissioner ought to have measured the property as per the Documents produced by the parties in order to come to a conclusion as to whether there is any encroachment made by the petitioner/defendant. But, the Advocate Commissioner has failed to measure the property as per the order passed in the earlier application in I.A.No.3 of



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2022. To have a fair adjudication and to resolve the dispute between the parties, the Trial Court has correctly scrapped the earlier Advocate Commissioner's Report and passed the order for appointing a fresh Advocate Commissioner which is in accordance with law.

13. The Trial Court after recording its dissatisfaction over the proceedings of the Advocate Commissioner scrapped the Report. Therefore, it is not necessary to interfere with the impugned order dated 20.03.2023 passed in I.A.No.6 of 2022 in O.S.No.65 of 2022 and the impugned order is confirmed.

14. Accordingly, this Civil Revision Petition is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

27.09.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
The Sub Judge,
Manamadurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-Delivery Order made in

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