

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.4745 of 2014  
& M.P.No.1 of 2014

P.Girija .. Petitioner / Plaintiff

*Versus*

Cherukandoth Sunilkumar .. Respondent / Defendant

**Prayer:** Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 25.08.2014 passed in I.A.No.121 of 2014 in O.S.No.30 of 2012 on the file of the Subordinate Judge, Mahe and set aside the same by allowing the petition.

|                |   |                 |
|----------------|---|-----------------|
| For Petitioner | : | Mr.R.Natarajan  |
| For Respondent | : | Mr.S.R.Sundaram |

**ORDER**

The Civil Revision Petition is filed against the fair and decreetal order dated 25.08.2014 in I.A.No.121 of 2014 in O.S.No.30 of 2012 on the file of the Subordinate Court, Mahe.

2.The petitioner, as plaintiff, filed a suit in O.S.No.30 of 2012 for declaration declaring that the compound wall situated on the western boundary line of the plaint schedule property belongs to the plaintiff and also for injunction. The defendant filed written statement and contested the suit. During pendency of the suit, the petitioner / plaintiff filed an application to appoint an Advocate Commissioner in I.A.No.333 of 2012 where the Commissioner was appointed and he filed a report along with plan. Instead of

filing objection to the Commissioner's report, the petitioner / plaintiff filed I.A.No.307 of 2013 to issue warrant to the same Commissioner to inspect the property along with Taluk Surveyor and file a report. That application has been dismissed by the Trial Court, as per order dated 19.11.2013. In that it was mentioned that "If the petitioner wants a new survey of the property, she may file an application for new Advocate Commissioner along with prayer of Government Department Surveyor help. Hence, this petition is dismissed." So, the petitioner / plaintiff filed the present application in I.A.No.121 of 2014 for appointment of new Advocate Commissioner. After hearing both sides, the Trial Court has dismissed the application filed by the petitioner/plaintiff on 25.08.2014 stating that without scraping the earlier Commissioner's report and plan, this second application is not maintainable. Against which, the present revision has been preferred by the plaintiff.

3.Learned counsel appearing for the revision petitioner submitted that earlier the Trial Court has passed order in I.A.No.307 of 2013 on 19.11.2013, it was specifically mentioned as follows;

"If the petitioner wants a new survey of the property she may file an application for new Advocate Commissioner along with prayer of Government Department Surveyor help. Hence, this application is dismissed."

So that factum was not considered by the Trial Court. Hence, he prayed for

allowing the revision petition.

4. Resisting the same, learned counsel appearing for the respondent submitted that the suit is for declaration and also for injunction. So, the petitioner / plaintiff has to prove that she is the owner of the property. Already Commissioner has inspected the property in the presence of both sides and filed his report along with plan. The Trial Court has rightly considered the same and dismissed the application. Hence, there is no necessity for appointment of new Advocate Commissioner. Therefore, he prayed for dismissing the revision petition.

5. Considering the rival submissions made on both sides and on perusal of the typed set of papers, the petitioner / plaintiff filed the suit for the following reliefs:

- “[a]for declaration declaring that the compound wall situates on the western boundary line of the plaint schedule property belongs to the plaintiff;
- [b]for injunction restraining the defendant and his men from erecting the compound wall on the western side of plaint schedule property starting from the road end to gate pillar on the south west corner;
- [c]directing the defendant to pay cost of suit;
- [d]granting such other and further reliefs.”

6. Admittedly, the Commissioner was appointed in I.A.No.307 of 2013 and he inspected the property, after giving notice to both sides, along with parties and Taluk Surveyor, he measured the property and filed a report along with plan. Admittedly, no one has filed objection. Instead of filing objection to the Commissioner's report, the petitioner / plaintiff filed I.A.No.307 of 2013 for setting aside the Commissioner's report and issue warrant to the same Commissioner to inspect the property and measure the property with the help of Taluk Surveyor and file a fresh report. However, that application was dismissed with the following reasons;

"If the petitioner wants a new survey of the property she may file an application for new Advocate Commissioner along with prayer of Government Department Surveyor help. Hence, this application is dismissed."

Without filing any revision against that order, the petitioner/plaintiff filed a fresh application for appointment of Commissioner.

7. It is well settled dictum of the Hon'ble Apex Court that new Advocate Commissioner shall not be appointed without scraping earlier commissioner's report and plan. But here, I.A.No.307 of 2013 was already dismissed, so the earlier Commissioner's report and plan are in existence. In such circumstances, the remedy for this petitioner/plaintiff is to challenge the order passed in I.A.No.307 of 2013 instead of filing a fresh application for appointment of new

Advocate Commissioner. The petitioner/plaintiff has to prove her possession by way of filing the relevant documents before the Court.

8.Considering the aforestated circumstances of the case, I am of the view that, without scrapping the earlier Commissioner's report, the new Commissioner could not be appointed. That factum was rightly considered by the Trial Court. Therefore, the order passed by the Trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision petition deserves to be dismissed and it is hereby dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. It is left open to the petitioner / plaintiff to file an objection to the Commissioner's report along with the petition for condonation of delay. The Trial Court is directed to decide the petition on merits and in accordance with law for condoning the delay in filing the petition.

**16.12.2015**

Index : Yes / No  
Internet : Yes / No  
sri

R.MALA,J.

sri

To

The Subordinate Judge, Mahe.

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