



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 09.01.2015

CORAM:

**THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA**

C.R.P(MD)No.2679 of 2014 and M.P(MD)No.1 of 2014

WEB COPY

Chandran

.. Petitioner/Petitioner/1<sup>st</sup> Defendant

Vs.

Wales Rajan

.. Respondent/Respondent/Plaintiff

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order, dated 19.08.2014 passed in I.A.No.904 of 2010 in O.S.No.332 of 1996 on the file of the Principal District Munsif, Valliyoor.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.A.Arumugam

**ORDER**

This Civil Revision Petition is directed against the order in dismissing the petition filed under Order 26 Rule 9 of the Code of Civil Procedure, 1908 in I.A.No.904 of 2010 to re-issue the warrant of the commission to the Commissioner to inspect the property and to note down the physical features.

2. The respondent herein as plaintiff has taken up the plaint in O.S.No.332 of 1996 on the file of the District Munsif Court, Valliyoor for declaration and injunction and the suit was filed in the year 1996. Originally, a Commissioner was appointed, who had visited the property and filed his report.

3. The contention of the revision petitioner is that the Commissioner had not issued notice to him, at the time of inspection and the trial Court had decreed the suit only based on the report of the Commissioner. Hence, prayed for re-issuance of the warrant of the Commissioner.

4. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent.

5. As stated earlier, this is the suit of the year 1996 and the suit in O.S.No.332 of 1996 was decreed in favour of the plaintiff and the defendants preferred an appeal in A.S.No.115 of 1996 on the file of the I-Additional Sub Court, Tirunelveli, which was allowed and remanded back to the trial Court. At this stage, the application in I.A.No.904 of 2010 for re-issuance of the warrant of the Commission was sought for by the first defendant.

6. The main grievance of the petitioner/first defendant is that the Commissioner had not issued any notice, at the time of first inspection. However, the learned counsel appearing for the respondent/plaintiff pointed out that in the evidence of D.W.1, wherein it has been admitted by him that he was present when the Commissioner had visited the property and taking measurement.



7. Admittedly, after the filing of the report of the Commissioner, the defendant had not filed any objections. The contention of the petitioner is that the Commissioner had wrongly measured the length and breadth of the suit property. If the petitioner/first defendant was so aggrieved by the report of the Commissioner, it was open to him to cross-examine the Commissioner before the trial Court and clarify his case. Having failed to do so, he cannot ask for re-issuance of the same commission without scrapping the Commissioner's report. The petitioner also could not give valid reasons for scrapping the report of the earlier commission. He has not filed any other objections or cross-examined the Commissioner to make out a case for scrapping the report.

8. It has been held in catena of cases that the Commissioner cannot be appointed to gather evidence.

9. In this case, the petitioner is seeking to re-issue the same commission, after remand from the Appellate Court. It clearly indicates the attitude of the defendants that their intention is only to procrastinate the proceedings.

10. The trial Court held that the petitioner has not proved that the Commissioner inspected the property without giving notice to him. It is also observed that the suit property was measured with the help of the Taluk Surveyor, as per the survey plan. More than 15 years have lapsed after the filing of the suit and the petitioner cannot maintain such application, after remand from the Appellate Court when no such liberty is granted by the appellate Court. A report of the Commissioner is only a piece of evidence for the Court to adjudicate the dispute between the parties. It is open to the petitioner/first defendant to establish the length and breadth of the property by other evidence independent of the report of the Commissioner. In these consequences, there is no irregularity in the order of the Principal District Munsif, Valliyoor, which warrants any interference.

11. In fine, this Civil Revision Petition is dismissed. The learned Principal District Munsif, Valliyoor is directed to dispose of the suit in O.S.No.332 of 1996 before the end of March, 2015 and report compliance to this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Writs)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Principal District Munsif,Valliyoor.

2.The Principal District Munsif,Tirunelveli.

Copy to:

The Section Officer,Judicial Section,

Madurai Bench of Madras High Court,Madurai.

+1cc to Mr.G.Prabhu Rajadurai,Advocate, SR.No. 1310