



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (PD) (MD) .Nos.510 and 511 of 2014

and

M.P. (MD) .No.1 of 2014 in

C.R.P. (PD) (MD) .No.510 of 2014

K.Shanmugasundaram Asari

... Revision Petitioner/Petitioner/Defendant in both C.R.Ps

vs.

Ramasamy Asari

.. Respondent/Respondent/Plaintiff in both C.R.Ps

COMMON PRAYER: The Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.Nos.531 and 532 of 2012 in O.S.No.102 of 2012 dated 17.09.2013 passed by the District Munsif Court, Thiruchendur.

For Petitioner in

Both C.R.Ps

: Mr.M.C.Swamy

For Respondent in

Both C.R.Ps

: Mr.M.P.Senthil

COMMON ORDER

The two revisions are filed by the defendant challenging the order passed by the District Munsif Court, Thiruchendur refusing to scrap the Commissioner report and to appoint a new Advocate Commissioner to visit the suit property in order to note down the physical features therein.

2.According to the petitioner, the commissioner, who has visited the property without giving notice to the petitioner/defendant, had filed his report before the Court. The Petitioner on going through the report found that the Commissioner has mentioned the second schedule wall as a common wall. According to the defendant, it is not a common wall. It is pointed out by the learned counsel for the petitioner that the suit for the relief of declaration that the second schedule wall is a common wall to both the plaintiff and the defendant.

3.In such circumstances, the Commissioner has mentioned it as a common wall which amounted to have given a finding in the suit itself. Therefore, the defendant/petitioner prays for scraping the report of the Commissioner and appoint a fresh commissioner. The defendant also had



filed another application to condone the delay in filing objection to the earlier commissioner report. The above said applications were resisted by the plaintiff/respondent stating that the petitions are not maintainable either under law or on facts. The Commissioner has not mentioned that the second schedule wall is a common wall. Therefore there is no reason assigned by the defendant to scrap the report of the commissioner. The District Munsif Court heard the application, dismissed the same holding that the parties are bound to let in independent evidence to establish that the wall is the common wall or absolute wall, as a case may be and that the report of the commissioner is not a conclusive evidence. Aggrieved by the same, the petitioner/defendant has preferred the above said revisions.

4. Heard both sides.

5. The only point that has to be decided is whether the report of the Commissioner has to be scrapped and a new commissioner has to be appointed. Under Order 26 Rule 10(3) of C.P.C, the trial Court has got the discretion to order for fresh commissioner or not. Further, the Court is not bound to do so in every case where the result of the local investigation is found to be unsatisfactory. Where the trial Court is dissatisfied with the proceedings of the commissioner that it thinks it better to discard the whole and start afresh it may do so.

6. According to the learned counsel for the petitioner, the report of the commissioner is like a judicial finding and not an administrative report. Therefore, the same cannot be sustained. If the commissioner has misconceived his duties to render his report valueless, it may be wiped out or to be superseded by a fair report by a specific order to that effect and it is open to the Court to scrap the report and appoint a fresh commissioner. It is to be seen that the report of the commissioner is only a piece of evidence and it is not binding on the Court. It is also pertinent to point out that the petitioner has already filed his objections to the report of the commissioner and it is also open to him to examine the commissioner if he had gone wrong in his report. The learned counsel for the respondent contended that having filed his objection to the report of the commissioner, which is also been taken on file, the petitioner is estopped from seeking to set aside the report of the first commissioner. The learned counsel for the petitioner agreed that the same commissioner may be reissued and revisit the property and note down the physical features with the help of the surveyor. No doubt, without scrapping the first commissioner's report it is not possible to appoint a commissioner for the same purpose for the second time. Here the earlier commissioner report, need not be scrapped because by reissuing the warrant the commissioner is only directed to submit additional report by noting down the physical features and measure with the help of the Taluk Surveyor. Thus both the reports will be filed before the Court and the second report will be filed as a supplementary report or additional report. As the petitioner has already filed his objections to the report of the first commissioner, first report need not be scraped. However, the same commissioner is to be reissued the warrant to note down the physical features and measure the property with



the help of the surveyor and file his report which should be called as a supplementary report.

With the above observation, the civil revision petitions are disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/TRUE COPY/

Sub Assistant Registrar

To
The District Munsif,
Thiruchendur.

+1cc to Mr.M.C.Swamy,Advocate, SR.No.6960
+1cc to Mr.M.P.Senthil,Advocate, SR.No.6836

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