

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.162 of 2014
and
M.P.No.1 of 2014

Nallathambi Gounder ... Petitioner

vs.

Natarajan ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 24.10.2013 passed in I.A.No.865 of 2013 in O.S.No.288 of 2009 on the file of the learned Additional District Munsif, Tiruchengode.

For Petitioner : Mr.N.Manokaran

For respondent : Mr.M.S.Palanisamy

ORDER

The plaintiff is the revision petitioner and the challenge is with regard to the order dated 24.10.2013 passed by the learned Additional District Munsif, Tiruchengode, in the application filed by the respondent/defendant in I.A.No.865 of 2013 in O.S.No.288 of 2009

seeking appointment of an Advocate Commissioner for the second time, in the suit filed by the plaintiff for declaration of his rights to use the suit property and for an injunction.

2. It is stated by the revision petitioner/plaintiff that earlier he had filed I.A.No.328 of 2009 for appointment of Advocate Commissioner, which was allowed and a report was also filed by the Commissioner after notifying the physical features of the property along with the sketch. The Commissioner also filed his report on 23.11.2011 and that he was examined on the plaintiff's side as PW3. Thereafter, when the evidence given by the Commissioner did not suit the respondent/defendant, he has filed the present application for appointment of another Commissioner to note down the physical features, after measuring the property with the help of a surveyor, and to file a report. The revision petitioner/plaintiff contested the application, stating that the earlier report of the Commissioner is available and objection to the same was not filed by the respondent/defendant. Therefore, it is deemed that the report of the Commissioner has been accepted by the respondent/defendant in the absence of any objection. After examining the Commissioner as PW3, the evidence of the plaintiff's side was also closed and it is now posted

for the defendant's side evidence. At this stage, the above application filed by the respondent/defendant seeking appointment of a second Commissioner was allowed by the Court below. Aggrieved by the same, the present revision has been filed.

3. Heard both sides.

4. On a perusal of the records, it is seen that admittedly, the respondent/defendant had not objected to the report filed by the first Commissioner and after the examination of the said Commissioner on the plaintiff's side as PW3, having found nothing in his favour, the respondent/defendant has sought for appointment of a second Commissioner to fill up the lacuna. Even if the Commissioner's report is accepted by itself, the parties are not precluded from challenging the evidence of the Commissioner or assailing the report by examining any other witness to countermand the report of the Commissioner. The report of the Commissioner itself is not a concluding evidence, as it can be only one piece of evidence amongst other evidence lead by parties to decide the issue. Therefore, in the absence of any objection to the report of the Commissioner, the Court would rightly accept the report. However, as stated earlier, it is open to the parties to lead

further evidence to distort the report of the Commissioner.

5. In the case on hand, the respondent/defendant has not sought for setting aside the report filed by the Commissioner or prayed for issuing the same Commissioner to note down the physical features afresh, after scrapping his earlier report. However, he has sought for appointment of a new Commissioner for the same cause. Though the Court has got power under Order 26 Rule 10(3) of the Code of Civil Procedure to order a fresh enquiry, it is not bound to do so in every case, merely because the report of the Commissioner is found unsatisfactory. Only when the Court is dissatisfied with the entire proceedings of the Commissioner, on consideration of the objections of the parties, at its discretion may discard the report of the Commissioner and order a fresh commission.

6. Here, the respondent/defendant without challenging the report of the Commissioner by filing his objections, waited for the examination of the Commissioner to be proceeded with and when the evidence of the Commissioner did not find favour with him, he has decided to file the second application for appointment of the Commissioner. Such practice is deprecated. Even otherwise when

there is no dispute regarding the identity of the suit property, the second application has been filed only to protract the proceedings and to create confusion with regard to the physical features. Therefore, the impugned order appointing the second Commissioner is materially irrelevant and the same has to be set aside.

7. In fine, the impugned order dated 24.10.2013 passed in I.A.No.865 of 2013 in O.S.No.288 of 2009 passed by the learned Additional District Munsif, Tiruchengode is set aside. This Civil Revision Petition is allowed. However, considering the fact that the suit is of the year 2009, the Court below is directed to dispose of the suit itself on or before 30.04.2017. No costs. Consequently, the connected miscellaneous petition is closed.

19.12.2016

vj2

Index: Yes/No
Internet: yes

To

The Additional District Munsif, Tiruchengode

PUSHPA SATHYANARAYANA.J

vj2

C.R.P.PD.No.162 of 2014

19.12.2016

<http://www.judis.nic.in>