

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

CRP(PD)No.3856 of 2014
and M.P.No.1 of 2014

V.K.Anbazhagan

... Petitioner

Versus

1. Arulprakasam @ Kailasam

2. The District Collector,
Collectorate,
Thiruchengode Raod,
Namakkal District.

3. Thashildar,
Rasipuram Taluk,
Rasipuram.

4. Firka Surveyor,
Rasipuram Taluk,
Rasipuram.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 20.01.2014 passed in I.A.No.719 of 2013 in O.S.No.171 of 2011 on the file of the District Munsif Court, Rasipuram.

For Petitioner	:	Mr.C.Jagadish
For R1	:	Mr.R.Jayaprakash
For R2 to R4	:	Ms.Jayashree

ORDER

The first respondent filed a suit in O.S.No.171 of 2011 for injunction.

In the said suit, the first respondent filed an application for appointment of Commissioner. The Advocate Commissioner so appointed submitted his reports. The parties have filed objections. Thereafter, the petitioner filed an application in I.A.No.719 of 2013 to re-issue the warrant to the Commissioner for the purpose of fresh inspection. The application was dismissed by the trial Court. The said order is under challenge in the Civil Revision Petition.

2. The learned counsel for the petitioner contended that the Advocate Commissioner submitted two reports, initially an interim report and thereafter, a final report. There are discrepancies in the reports filed by the Advocate Commissioner. Moreover, the correct measurement was not mentioned in the reports submitted by the Advocate Commissioner. The Trial Court was not correct in dismissing the application to re-issue the warrant to the Advocate Commissioner.

3. The learned counsel for the first respondent justified the order passed by the Trial Court.

4. The Commissioner appointed by the trial Court, pursuant to the application in I.A.No.857 of 2011 in O.S.No.171 of 2011, appears to have filed an interim report on 23.04.2012 and a final report on 12.09.2013. It is the grievance of the petitioner that even though assistance of surveyor was taken by the Commissioner, no attempt was made to show the measurement

of the property. The learned Judge was of the view that the Commissioner could be appointed at a later point of time, in case, the Court is of the view that such appointment is necessary.

5. After hearing the parties at length and on a perusal of the reports dated 23.04.2012 and 12.09.2013, I am of the view that the matter requires fresh consideration after conclusion of evidence.

6. In the result, the order dated 20.01.2014 is set aside. The Application in I.A.No.719 of 2013 in O.S.No.171 of 2011 is restored to file.

7. The learned District Munsif, Rasipuram, is directed to consider the application in I.A.No.719 of 2013 on merits as per law, after the conclusion of trial.

8. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2016

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To

1. The District Munsif Court,
Rasipuram.

K.K.SASIDHARAN, J.

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