

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3992 of 2014
and
MP.No.1 of 2014

Chinnusamy

...Petitioner

versus

1. Chinnammal

2. Arumugam

3. Arjunan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 31.10.2011 passed in I.A.No.392 of 2011 in O.S.No.260 of 2008 on the file of District Munsif, Mettur, Salem District.

For Petitioner : Mr.M.R.Jothimanian

For respondent : Mr. P.Mani

ORDER

The plaintiff in O.S.No.260 of 2008 is the petitioner in this Civil Revision Petition.

2. The petitioner filed a suit for declaration and recovery of possession. In the said suit, Advocate Commissioner was appointed at the instance of the petitioner. The petitioner submitted objection to the report filed by the Advocate Commissioner. Thereafter, the petitioner filed an application in I.A.No.392 of 2011 to scrap the report and appoint another Advocate Commissioner to inspect the property. The said application was dismissed by the trial court on the ground that justifiable reasons were not given to scrap the report. The order dated 31.10.2011 in I.A.No.392 of 2011 is under challenge in this Civil Revision Petition.

3. The learned counsel for the petitioner contended that the report submitted by the Advocate Commissioner contains certain discrepancies with regard to measurement, field map and patta and it was only under the said circumstances, a request was made by the petitioner to scrap the report and appoint another Commissioner.

4. The learned counsel for the respondents justified the order passed by the trial court.

5. The petitioner wanted the trial court to scrap the report submitted by the Advocate Commissioner and to appoint another Commissioner. According to the petitioner, there were certain discrepancies with regard to measurement and as such the matter requires fresh inspection by another Advocate Commissioner.

6. The trial court dismissed the application with an observation that the report of the Advocate Commissioner is only a piece of evidence and the same is not a conclusive proof. According to the learned trial Judge, there were no materials produced by the petitioner for the purpose of scrapping the report.

7. After hearing the counsel for the parties and on a perusal of the documents available on record, I am of the view that an equitable order should be passed in this matter.

8. The trial court is directed to permit the Advocate Commissioner to inspect the property once again along with a Surveyor. The parties are given liberty to file a memo before the Advocate Commissioner indicating the facts to be noted during the course of inspection. The learned Advocate Commissioner shall take

note of the memo and inspect the property. In case the report already filed by the Advocate Commissioner contained the details with regard to the requirements now made by the petitioner, there is no need for further inspection on such matter. In any case, it is for the Advocate Commissioner to inspect the property in the light of the memo filed by the petitioner and respondent. As pointed out by the learned trial Judge, the Commissioner's report is only a piece of evidence and the Court is not bound to decide the matter solely on the basis of such report.

9. The order passed by the trial Judge in I.A.No.392 of 2011 in O.S.No.260 of 2008 dated 31.10.2011 is set aside.

10. The Civil Revision Petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

09.11.2016

Index:Yes/No
ajr

To

District Munsif, Mettur, Salem District.

K.K.SASIDHARAN, J.

ajr

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