

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.11.2016**

CORAM:

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

C.R.P.(P.D.) No.1195 of 2015 and
MP.No.1 of 2015

R.S.Madhavan

...Petitioner

versus

Ganga Bai

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 4.12.2014 passed in I.A.No.10380 of 2014 in O.S.No.5925 of 2008 on the file of the XVI Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Thanjan

For respondent : Mr.S.Devanathan

ORDER

The petitioner filed a suit for declaration and injunction. In the said suit, Advocate Commissioner was appointed by the trial court to inspect the suit property and submit a report. The Advocate Commissioner appears to have filed a memo before the trial court seeking the assistance of a Surveyor. In the said memo, it was

indicated that he would require the assistance of either a Government surveyor or a private surveyor. The learned trial Judge appears to have permitted the trial court to take the assistance of a private surveyor. The petitioner filed a memo before the trial court to take the assistance of an official surveyor instead of a private surveyor. The memo was rejected by the trial court. Thereafter, the petitioner filed an Interlocutory Application in I.A.No.10380 of 2014, requesting the trial court to permit the Advocate Commissioner to take the assistance of official Surveyor. The application was dismissed by the trial court primarily on the ground that in view of the memo filed earlier and rejected, no fresh application for the very same relief is maintainable. Feeling aggrieved by the said order, the petitioner is before this court.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The documents available on record indicate that the Advocate Commissioner appointed by the trial court wanted the assistance of a Surveyor. It is the prerogative of the court to direct the Advocate Commissioner to take the assistance of either a Government Surveyor or a private surveyor. The trial court appears to have permitted the

Commissioner to take the assistance of a private surveyor. It is also a matter of record that the petitioner earlier filed a memo, requesting the Court to direct the Commissioner to take the assistance of an official surveyor, instead of a private surveyor. Such request was not adhered to by the trial court. The subsequent application was dismissed only on the ground that in view of the order passed in the memo earlier, a fresh application for the very same relief is not maintainable.

4. There is no question of *res judicata* in a matter like this. The request was made to appoint an official surveyor, instead of a private surveyor. In the normal course, there should have been a direction to take the assistance of an official surveyor, instead of a private surveyor. In the present case, request was made by the learned Advocate Commissioner to permit him to take the assistance of either a Government surveyor or a private surveyor. The Court has taken the second option by directing him to take the assistance of a private surveyor. Since the property should be measured with reference to revenue records, the assistance of Taluk Surveyor would be very helpful. I am therefore of the view that the trial Judge was not correct in dismissing the application.

5. In the result, the order dated 4.12.2014 is set aside. The

learned trial Judge is directed to re-issue the Warrant to the Advocate Commissioner with an indication that he shall take the assistance of a Taluk Surveyor for the purpose of measuring the property.

6. The learned counsel for the respondent submitted that the petitioner has been dragging the matter under one pretext or the other and as such, a direction should be given to conclude the commission proceedings as expeditiously as possible.

7. The learned Advocate Commissioner shall issue notice to the petitioner as well as the respondents, indicating the date of inspection. In case the parties fail to appear before the Advocate Commissioner inspite of giving notice, it is open to him to conduct inspection and submit a report before the trial court.

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

10.11.2016

Index:Yes/No
ajr

To

XVI Assistant City Civil Court, Chennai.

K.K.SASIDHARAN, J.

ajr

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