

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.2488 of 2016
and
C.M.P.No.12861 of 2016

P.V.Srinivasalu Naidu
S/o.Venkatappa Naidu

... Petitioner

VS

P.V.Jayaramalu Naidu
S/o.Venkatappa Naidu

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned District Munsif, Guidyatham, Vellore District, passed in I.A.No.564 of 2014 in O.S.No.322 of 2008 on 04.09.2015.

For Petitioner : Mr.M.P.Jayaprakash

ORDER

This revision arises against the order of learned District Munsif, Guidyatham, Vellore District, passed in I.A.No.564 of 2014 in O.S.No.322 of 2008 on 04.09.2015.

2. Respondent/plaintiff filed suit in O.S.No.322 of 2008 on the file of learned District Munsif, Gudiyatham, Vellore District, seeking declaration and other consequential reliefs. Petitioner is the defendant. Respondent/plaintiff moved I.A.No.11 of 2013 seeking appointment of an Advocate Commissioner towards inspection of the suit property and the same was allowed. The Advocate Commissioner has filed his report on 25.04.2016. By way of I.A.No.564 of 2014, petitioner/defendant has challenged such report contending that the Advocate Commissioner has filed his report along with sketch without taking the assistance of the surveyor. It has been contended by respondent/plaintiff that the issue involved was whether a cart path had been encroached by petitioner and the Advocate Commissioner has prepared his report in the presence of petitioner and his counsel. There was no need to have the assistance of a surveyor. The Court below, under orders dated 04.09.2015, dismissed such application. Hence, this revision.

3. Heard learned counsel for petitioner.

4. This Court notes that in issuing the Advocate Commissioner warrant in I.A.No.11 of 2013, Court below specifically has required the Advocate Commissioner to note down the physical features and to measure the property with the help of a qualified surveyor and file a detailed report. Therefore, this Court is of the view that the Advocate Commissioner has not executed his warrant in keeping with the directions of the Court. The Court below has passed an erroneous order. However, merely owing thereto, this Court, would not, as a matter of course admit the Civil Revision Petition. Rather towards serving purpose also of the respondent/plaintiff, this Court would proceed to pass orders without notice to respondent/plaintiff.

The Civil Revision Petition shall stand allowed. The order of learned District Munsif, Guidyatham, Vellore District, passed in I.A.No.564 of 2014 in O.S.No.322 of 2008 on 04.09.2015 shall stand set aside. As appointment of a different Advocate Commissioner would entail expenses, the Court below is directed to issue a fresh warrant to the same Advocate Commissioner requiring him to inspect the property and to note down the physical features with the assistance of a Surveyor and to file a report within a period of one week. The

Court below shall, immediately upon receipt of the present order, proceed to appoint Advocate Commissioner as above instructed and shall dispose of the suit in O.S.No.322 of 2008 as expeditiously as possible, in any event, not later than three months from the date of receipt of this order. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2016

Note to office:

Issue order copy by 30.08.2016

Index:yes/no

Internet:yes

gm

To

The District Munsif,

Guidyatham,

Vellore District.

C.T.SELVAM, J

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