

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.4257 of 2013
and
M.P.No.1 of 2013

Madhanlal D Chawla
S/o.Dowlathram Chawla

... Petitioner

vs

Murugesan
S/o.Subramania Pillai

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned Principal District Munsif, Salem, passed in I.A.No.1356 of 2012 in I.A.No.1865 of 2010 in O.S.No.1211 of 2010 on 20.08.2013.

For Petitioner : Mr.C.Prabhakaran, senior counsel
for Mr.R.Nalliyappan

For Respondent : Mr.T.M.Hariharan

ORDER

This revision arises against the order of learned Principal District Munsif, Salem, passed in I.A.No.1356 of 2012 in I.A.No.1865 of 2010 in O.S.No.1211 of 2010 on 20.08.2013.

2. Respondent/plaintiff filed O.S.No.1211 of 2010 on the file of learned Principal District Munsif, Salem, seeking permanent injunction. Respondent/plaintiff moved I.A.No.1865 of 2010 seeking appointment of an Advocate Commissioner towards inspection of the suit property and to file his report. Such application was allowed and an Advocate Commissioner was appointed and he was directed to inspect the suit property with the assistance of Surveyor and Village Administrative Officer and to fix the boundary line. However, the Advocate Commissioner has inspected the property without the assistance of Surveyor and Village Administrative Officer and filed his interim report dated 28.11.2011. Challenging such interim report, petitioner/defendant moved I.A.No.1865 of 2010, which came to be dismissed under order dated 20.08.2013. Aggrieved, petitioner/defendant has filed the present revision.

3. Heard learned senior counsel for petitioner and learned counsel for respondent.

4. Learned counsel for respondent submits that despite notice, petitioner has chosen not to be present when the Advocate Commissioner visited the property.

5. In accepting the report of the Advocate Commissioner, the Court below has informed that when it was the defendant's case that the Advocate Commissioner has inspected the property without the assistance of Surveyor and Village Administrative Officer, he ought to have filed an application seeking a direction to revisit the property by the very same Advocate Commissioner with the assistance of Surveyor and Village Administrative Officer. Instead, defendant has filed the present application alleging that the report of the Advocate Commissioner was biased, but to substantiate the same, neither the defendant nor the Advocate Commissioner has been examined. Observing that the defendant has filed the application only to protract proceedings, the Court below dismissed such application.

6. This Court has perused the Advocate Commissioner's report. This Court notes that the commission has been issued on 03.01.2011 and immediately on the very next day i.e. on 04.01.2011 the Advocate Commissioner had inspected the property and prepared an interim report despite the petitioner before us having informed his intent to challenge the issue of commission. Subsequently, the final report has been filed. This Court is of the view that in the circumstances of the present case, interests of justice would be met by setting aside the order under challenge and directing the Court below to issue a fresh commission for inspection of property.

In the result, the Civil Revision Petition is allowed. The order of learned Principal District Munsif, Salem, passed in I.A.No.1356 of 2012 in I.A.No.1865 of 2010 in O.S.No.1211 of 2010 on 20.08.2013 is set aside. The Court below is directed to issue a fresh commission for inspection of property. The Advocate Commissioner shall cause notice to both sides and thereafter, proceed to inspect the property and file his report. No costs. Consequently, connected miscellaneous petition is closed.

23.08.2016

Index:yes/no
Internet:yes
gm

To

The Principal District Munsif,
Salem.

C.T.SELVAM, J

gm

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