

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 14.11.2016****CORAM:****THE HONOURABLE MR. JUSTICE S.NAGAMUTHU****C.R.P.PD (MD) No.1284 of 2014**

R.Narasimman

... Petitioner/Petitioner/
Plaintiff

Vs.

V.Veeranan

... Respondent/Respondent/
Defendant

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Ex-order and fair order dated 06.04.2013 passed in I.A.No.899/2012 in O.S.No.450/2012 by the learned District Munsif's Court, Melur, and to allow the civil revision petition.

For Petitioner : Mr.V.Nagendran

For Respondents : Mr.P.T.S.Narendravasan

ORDER

The plaintiff in O.S.No.450/2012 on the file of the District Munsif, Melur, has come up with this revision challenging the order made in I.A.No.899/2012 filed by him declining to appoint an Advocate Commissioner to measure the suit property in an attempt to prove that the defendant has encroached upon a small portion of the property comprised in S.No.72 in the suit village.

2. I have heard the learned counsel on either side and also perused the records carefully.

3. Referring to the order made by the lower Court, the learned counsel for the petitioner would submit that the lower Court has dismissed the petition on unmerited grounds. He would submit that the lower Court has extensively referred to the earlier suit filed by the defendant in O.S.No.706/2004 in respect of his property comprised in S.No.73/2, in which, already there is an Advocate Commissioner's report. The learned counsel for the petitioner would submit that the said report cannot have any bearing in respect of the issue involved in the suit, in which, the suit

property comprised in S.No.72.

4. The learned counsel for the respondent would vehemently oppose this revision. According to him, the present revision is filed only with a view to drag on the proceedings unnecessarily. He would submit that earlier, the suit filed by the respondent in O.S.No.706/2004, already, there is an Advocate Commissioner's report filed and the same would clearly prove that the defendant has not made any encroachment on the property belong to the plaintiff. Therefore, according to him, the lower Court was right in dismissing the petition.

5. I have considered the above submissions.

6. According to the plaintiff, he is the owner of the property comprised in S.No.72 measuring 5 cents and he has not encroached upon. It is also admitted that on the western side of the suit property, the property of the defendant comprised in S.No.73/2 is situated. In respect of the possession of the property comprised in S.No.73/2, earlier suit was filed by the defendant, in which, decree has also been granted. The present suit is only in respect of the property comprised in S.No.72. The apprehension of the petitioner is that the defendant has encroached upon a portion of the property comprised in S.No.72, which is a suit property herein. In order to prove that a portion of the suit property has been encroached upon by the defendant, the plaintiff has filed the present suit.

7. In my considered view, there is nothing on record to prove that there is encroachment by the defendant. If at all there is any such encroachment, appointment of an Advocate Commissioner, in my considered view, for the said purpose would not in any manner cause any prejudice to anyone. Further, the Advocate Commissioner's report in the earlier suit may not be sufficient to resolve the issues in the said suit, because that was filed for the property comprised in S.No.73/2. In view of the said factual position, I am of the view that the lower appellate Court was not right in dismissing the petition.

8. In view of the above, the civil revision petition is allowed; the order of the lower Court is set aside and the lower Court is directed to appoint an Advocate Commissioner within a period of fifteen days from the date of receipt of a copy of this order and the said Advocate Commissioner shall measure the suit property with the help of a Taluk Surveyor, after giving due notice to both the parties and submit his report within a period of four weeks thereafter.

9. On production of a copy of this order, the Tahsildar concerned shall depute a Taluk Surveyor to assist the Commissioner and after the report of the Advocate Commissioner is filed, the



trial Court shall give 15 days time to the parties to file their objections, if any, thereafter, the trial Court commence the trial of the suit and dispose of the suit within a further time of four months thereafter. The trial Court shall fix the Commissioner's fee also. No costs. Consequently MP No.1 of 2014 is closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To
The District Munsif Court,
Melur

+1 cc to M/s.V.Nagendran, Advocate in SR.No. 68375
+1 cc to M/s.P.T.S.Narendravasan, Advocate in SR.No. 68772

RR
CSL/ SK-SKN/08.12.2016: 3P/4C

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