



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2016

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THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (MD) No. 2438 of 2016

and

C.M.P. (MD) No. 11477 of 2016

P. Palanisamy .. Petitioner/Respondent/ Defendant
Vs.
N. Ramakrishnan .. Respondent/Respondent/Plaintiff

PRAYER: Petition filed under Article 227 of Constitution of India, to set aside the order and decretal order dated 16.09.2016, passed by the learned District Munsif cum Judicial Magistrate, Vadipatti, in I.A.No.234 of 2016 in O.S.No.156 of 2009 and to allow the Civil Revision petition.

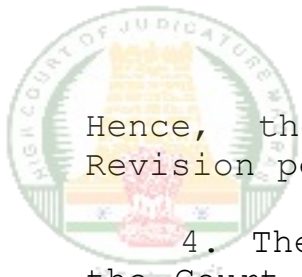
For Petitioner : Mr. R. Devaraj

O R D E R

This Civil Revision petition arises out of the order passed by the learned District Munsif cum Judicial Magistrate, Vadipatti, in I.A.No.234 of 2016 in O.S.No.156 of 2009, dated 16.09.2016.

2. Heard the learned counsel appearing for the petitioner.

3. According to the petitioner, the respondent herein filed a suit in O.S.No.156 of 2009 before the District Munsif cum Judicial Magistrate Court, Vadipatti, for declaration, permanent injunction and also for recovery of possession. In the aforesaid suit, the respondent herein/plaintiff filed an application in I.A.No.351 of 2010 for appointment of Advocate Commissioner to note down the physical features of the suit property and to ascertain the encroachment with the help of surveyor and the same was allowed. After the inspection, the Commissioner submitted a report before the Court below. In the aforesaid report, the respondent herein filed objection. Therefore, the respondent herein filed the present application in I.A.No.234 of 2016 seeking to direct the Advocate Commissioner to re-inspect the suit property with the assistance of surveyor and to measure the suit property in accordance with the title deeds and revenue records, by re-issuing warrant to the same Commissioner on the ground that the report filed by the Commissioner was not helpful to the Court below to decide the issue. According to the petitioner/defendant the present application was erroneously allowed by the Court below.



Hence, the Revision petitioner has filed the present Civil Revision petition.

4. The learned counsel for the petitioner would submit that the Court below without considering the objections raised by him, allowed the present application. Now the present application was filed only for the purpose of acquiring evidence of the suit property and it was impermissible in law.

5. In view of the said submissions made by the learned counsel for the petitioner, it is an admitted fact that in the aforesaid suit, the respondent filed an application in I.A.No.351 of 2010 to appoint an Advocate Commissioner to note down the physical features of the suit property. Thereafter, the Commissioner inspected and submitted a report before the Court below. On perusal of the said report, it reveals that the Commissioner had not submitted the report about entire measurement of the suit property. The present application in I.A.No.234 of 2016 was filed for re-issuing the warrant to the same Commissioner to re-inspect the property and to submit the report and to decide the issue in the aforesaid suit. By considering the said factum of the possession, the Court below has allowed the application. Though the Advocate Commissioner was appointed for the purpose of collecting the materials, it is always open to the petitioner to object the Advocate Commissioner to prove the possession of the suit property. The present application has been filed on the basis of the earlier report and therefore, there is no necessity to re-issue warrant for the Advocate Commissioner to measure the entire property with the help of surveyor so as to decide the issues in the suit.

6. In view of the facts and circumstances of the case, the Civil Revision petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate, Vadipatti.
 2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.
- +1 cc to Mr.R.Devaraj, Advocate, SR.No. 78563

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