



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2516 of 2016 (PD)

and

C.M.P(MD)No.11887 of 2016

Muthusamy

.. Petitioner/Petitioner/Plaintiff

Vs.

L.Ayyappan

..Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Fair and Decretal order, dated 18.10.2016 passed in I.A.No.105 of 2013 in O.S.No.108 of 2009 on the file of District Munsif-cum-Judicial Magistrate Court, Shencottai by allowing this Civil Revision Petition.

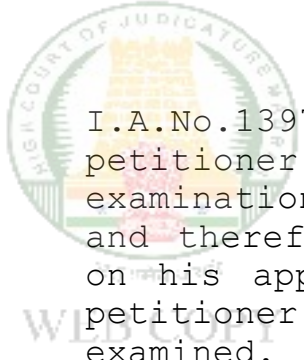
For Petitioner : Mr.D.Nallathambi

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Fair and Decretal order, dated 18.10.2016 passed in I.A.No.105 of 2013 in O.S.No.108 of 2009 on the file of District Munsif-cum-Judicial Magistrate Court, Shencottai.

2.The petitioner is the plaintiff filed a suit in O.S.No.108 of 2009, on the file of the District Munsif-cum-Judicial Magistrate Court, Shencottah, for declaration and permanent injunction. He filed I.A.No.1397 of 2010 for appointment of Advocate Commissioner. The Advocate Commissioner was appointed and he inspected the suit property and filed his report along with sketch. The petitioner filed I.A.No.105 of 2013 for re-issue of warrant on the ground that there are several mistakes in the Advocate Commissioner's Report and sketch.

3.The respondent filed counter affidavit and opposed the same. The respondent contended that the petitioner did not file any objection to the Advocate Commissioner's report filed in



I.A.No.1397 of 2010. In the suit the trial was commenced and petitioner was examined in chief and was posted for cross-examination. The petitioner did not appear for cross-examination and therefore, the suit was dismissed for default. Subsequently, on his application, the said suit was restored to file and the petitioner appeared on 01.11.2011 and the petitioner was cross-examined. In the cross-examination, he admitted that measurement mentioned in the Advocate Commissioner's Report, are correct. Subsequently, he filed I.A.No.37 of 2012 to file objection. The said application was dismissed on 16.02.2012. The petitioner took time for filing Civil Revision Petition and therefore, the order of dismissal was stayed for one month. The petitioner did not file any Civil Revision Petition and hence, the order, dated 16.02.2012 has become final. Only to drag-on the proceedings, the petitioner has filed the present Civil Revision Petition and submitted that the petitioner has given wrong boundaries in the suit and has not given any valid reason for re-issue of warrant of Commission.

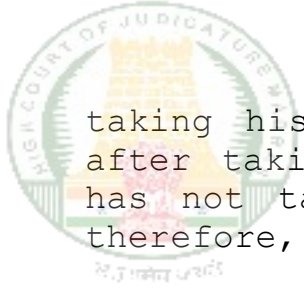
4.The learned Judge considering the averments made in the affidavit and counter affidavit and arguments of the counsel for the parties and judgment relied on by the parties, dismissed the application.

5.Against the said order of dismissal, the present Civil Revision Petition has been filed.

6.The learned counsel for the petitioner submitted that the learned Judge failed to see that I.A.No.37 of 2012 filed for taking objection of the petitioner to Advocate Commissioner's Report, was dismissed and therefore, it is necessary to re-issue of warrant of Commission. The re-issue of warrant of Commission, is necessary, for properly deciding the issues in the suit. Without deciding the proper measurement of property and distance between the property of the petitioner and respondent, the suit cannot be decided in a proper way. No prejudice will be caused to the respondent, if the same Advocate Commissioner is appointed to note down the physical features of the property. In support of his contention, the learned counsel for the petitioner relied on judgment reported in **2016(5) L.W.403 (Semitta Kaunder and another vs. Murugesan)**.

7.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

8. From the records, it is seen that the Advocate Commissioner was appointed in the year 2010 at the instance of the petitioner. The Advocate Commissioner inspected the suit property and filed his report. The petitioner has not filed any objection to the Advocate Commissioner's Report. He also admitted in the Cross-examination that measurement given in the Advocate Commissioner's Report is correct. I.A.No.37 of 2012 filed by the petitioner for



taking his objection on file was dismissed and petitioner even after taking one month time for filing Civil Revision Petition, has not taken any further proceedings challenging the same and therefore, the said order has become final.

9. In the circumstances, the application for re-issue of warrant to the same Advocate Commissioner is devoid of merits. The learned Judge has correctly appreciated the facts in proper perspective and there is no illegality or irregularity warranting interference by this Court.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Deputy Registrar

/True copy/

Sub Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate Court,
Shencottai.

Copy to:

The Section Officer,
V.R Section,
Madurai Bench of Madras High Court,

+1 cc to MR.D.Nallathambi ADVOCATE, SR NO:80456

am

js/11/01/2017/3p-4c

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