



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.728 of 2016 (PD)

and

C.M.P (MD) No.3459 of 2016

M.Kathammal

.. Petitioner/Petitioner/1st Defendant

Vs.

S.Susipradeep

.. Respondent/Respondent / Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 12.01.2016 made in I.A.No.347 of 2014 in O.S.No.535 of 2014 on the file of the District Munsif-Cum-Judicial Magistrate Court, Peraiyur.

For Petitioner : Mr.K.Hemakarthikeyan

ORDER

This petition has been filed by the petitioner to set aside the fair and decreetal order, dated 12.01.2016 passed in I.A.No.347 of 2014 in O.S.No.535 of 2014 by the District Munsif-Cum-Judicial Magistrate Court, Peraiyur.

2.The petitioner is the first defendant. The respondent is the plaintiff. The respondent filed the suit in O.S.No.535 of 2014, on the file of the District Munsif-cum-Judicial Magistrate, Peraiyur for permanent injunction restraining the defendant with regard to 'A' schedule property and for mandatory injunction in respect of the 'B' schedule property. The respondent also filed I.A.No.261 of 2014 for appointment of Advocate Commissioner. The Advocate Commissioner was appointed and he inspected the property and filed his report on 13.11.2014. The petitioner filed I.A.No.347 of 2014 for re-issue of warrant of commission.

3.According to the petitioner, the Commissioner did not follow the memo of instruction filed by the petitioner at the time of inspection and has not properly measured the property. There is a discrepancy in the report of the Advocate Commissioner.

4.The respondent filed counter affidavit and submitted that already the petitioner has filed objection to the report of the Advocate Commissioner. The petitioner filed an application only on the ground that the report of the Advocate Commissioner, is not favourable to him and to prolong the issue. The learned Judge considered all the facts and materials on record, dismissed the application. Against that, the petitioner has filed the present Civil Revision Petition.



5.The learned counsel for the petitioner submitted that the Advocate Commissioner did not consider the memo of instructions at the time. The Commissioner did not measure the property as per Revenue records. The learned Judge erred in dismissed the application on the ground that the petitioner has not filed any application to scrub the report of the Advocate Commissioner. The order of the learned Judge is arbitrary and contrary to the facts of the case. The learned Judge failed to note that the Advocate Commissioner wrongly demarcated the suit property and failed to survey the property as per the documents of the respondent.

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

7.From the materials, it is seen that at the instance of the respondent, an Advocate Commissioner was appointed to inspect the suit property. The Advocate Commissioner inspected the property in the presence of the petitioner and the respondent and filed his report. The petitioner has filed his objection to Commissioner's report objecting to each and every aspect of the Advocate Commissioner Report. The application filed by the petitioner for re-issue of commissioner's warrant will not serve any purpose to direct the same commissioner to inspect the property. The petitioner can cross-examine the Advocate Commissioner based on the objections filed by the petitioner. Unless, the report of the Advocate Commissioner is set aside, the necessity of the re-issue or appointment of new Advocate Commissioner does not arise. In the circumstances, there is no illegality or irregularity in the order warranting interference by this Court.

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

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The District Munsif-Cum-Judicial Magistrate,
Peraiyur.

+1 CC to Mr.K.HEMA KARTHIKEYAN, Advocate, SR No.18818

C.R.P(MD)No.728 of 2016(PD)
04.04.2016

am
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