

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.06.2017

Coram:

The Honourable Ms.**Justice V.M.VELUMANI**

C.R.P.(PD) Nos.1213 & 1681 of 2017
and C.M.P.5751 of 2017 in CRP No.1213 of 2017

Lakshmiammal	... Petitioner in C.R.P.No.1213 of 2017
S.Natesan	... Petitioner in C.R.P.No.1681 of 2017

Vs.

S.Natesan	... Respondent in C.R.P.No.1213 of 2017
P.Lakshmiammal	... Respondent in C.R.P.No.1681 of 2017

Prayer in CRP.No.1213 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order of District Munsif, Rasipuram dated 27.08.2015 made in I.A.No.343 of 2015 in O.S.No.49 of 2014.

Prayer in CRP.No.1681 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India for early disposal of the suit in O.S.No.49 of 2014 on the file of the District Munsif Court, Rasipuram.

For Petitioner	: Mr.S.Sounthar in CRP.No.1213 of 2017
	: Mr.M.Muthappan in CRP.No.1681 of 2017

For Respondent	: Mr.M.Muthappan in CRP.No.1213 of 2017
	Mr.S.Sounthar in CRP.No.1681 of 2017

COMMON ORDER**CRP PD No.1213/17:**

This Civil Revision Petition has been filed against the fair and final order dated 27.08.2015 made in I.A.No.343 of 2015 in O.S.No.49 of 2014 on the file of the District Munsif, Rasipuram.

2. Heard both sides and perused the materials available on record.

3. The petitioner is plaintiff and the respondent is the defendant in O.S.No.49 of 2014. The petitioner filed the suit for permanent injunction restraining the respondent from constructing the compound wall or fence and not to disturb the peaceful possession and enjoyment of the suit property. The petitioner filed an Interlocutory Application in I.A.No.245 of 2014 for appointment of Advocate Commissioner to inspect the suit property and to file report. Accordingly, the Advocate Commissioner was appointed and he inspected the suit property and measured the property with the help of Village Administrative Officer and Surveyor and filed the report.

4. The petitioner filed Interlocutory Application in I.A.No.343 of 2015 to scrap the report of the Advocate Commissioner on the ground that the Advocate Commissioner measured the property which belongs to the respondent at first and only after the objection of the petitioner, the Advocate Commissioner measured the suit property in the afternoon of 13.09.2014. The Advocate Commissioner measured the property only with tape and not measured with any links. The Advocate Commissioner did not consider the objections filed by the petitioner by way of memo and he deliberately did not measure the channels situated in the suit property and prayed for scrapping the report of the Advocate Commissioner.

5. The respondent filed the counter and denied all the allegations made against the Advocate Commissioner. According to the respondent, the Advocate Commissioner executed the warrant of commission properly. At the time of the inspection and measurement of the suit property, the petitioner, her son and her Advocate were present and they did not object to the Advocate Commissioner's report. The learned Judge considering the averments in the affidavit, counter affidavit and materials on record dismissed the application.

6. The grievance of the petitioner is that the Advocate Commissioner first measured the property of the respondent and then only measured the suit property of the petitioner after his objection. The Advocate Commissioner did not properly measure the property and failed to note down the physical features of the property. It is well settled that the report of the Advocate Commissioner is only to assist the Court in arriving at a conclusion and it cannot be taken as finality.

7. It is open to the petitioner to examine the Advocate commissioner and prove that the report submitted by him is not correct. It is for the Court either to accept the report or reject the same in the facts and circumstances of the case. The reasons given by the petitioner for scraping the report of the Advocate Commissioner in entirety are not valid.

8. The learned Judge, considering all the materials available on record, dismissed the application by giving cogent and valid reasons. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 27.08.2015.

9. In the result, the Civil Revision Petition No.1213 of 2017 is dismissed. No costs. Consequently connected Miscellaneous Petition is also closed.

CRP PD No.1681/17:

10. In this Civil Revision Petition, the petitioner is the defendant and the respondent is the plaintiff in OS No.49 of 2014. The petitioner filed the Civil Revision petition for early disposal of the Suit.

11. The learned counsel for the petitioner submitted that during the pendency of Civil Revision Petition No.1213 of 2017, the respondent has taken 23 adjournments and trial was kept pending without any progress and hence the petitioner has come out with the present Civil Revision Petition.

12. In view of the above dismissal order of Civil Revision Petition No.1213 of 2017, the learned Trial Judge is directed to dispose of the suit in OS.No.49 of 2014 on merits and in accordance with law, as expeditiously as possible, in any event, not later than 6 months from the date of receipt of a copy of this order.

V.M.VELUMANI, J.

cgi/jv

13. With the above direction, the Civil Revision Petition No.1681 of 2017 is disposed of. No costs.

13.06.2017

index: Yes/No
Internet: Yes/No
speaking order/non speaking order
cgi/jv

To

The District Munsif
Rasipuram.

C.R.P.(PD)Nos.1213 & 1681 of 2017