

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.11 & 12 of 2014
M.P.No.1 of 2014

1.Mannammal
2.Kumari
3.Sumathi
4.Rajathi
5.Suganthi
6.Chinnamal
7.Ruku @ Kuppu

.. Petitioners in
both C.R.Ps'

Vs.

1.Dhandapani
2.Annamalai

.. Respondents in
both C.R.Ps'

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal orders dated 22.10.2013 made in I.A.Nos.1612 of 2010 and 196 of 2012 respectively in O.S.No.49 of 2009 on the file of the Principal District Munsif, Tirukoilur.

For Petitioners : Mr.N.Suresh

For Respondent : No appearance

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal orders dated 22.10.2013 made in I.A.Nos.1612 of

2010 and 196 of 2012 respectively in O.S.No.49 of 2009 on the file of the Principal District Munsif, Tirukoilur.

2.The issues and the parties involved in both the Civil Revision Petitions are interlinked and therefore, disposed of by this common order.

3.The petitioners are the plaintiffs and respondents are the defendants in O.S.No.49 of 2009. The petitioners filed the said suit against the respondents for declaration and injunction. The respondents filed written statement on 05.01.2010 and are contesting the suit. The petitioners filed I.A.No.249 of 2009 for appointment of Advocate Commissioner to inspect, measure the suit property with the help of surveyor, to note down the physical features and file his report. The said application was allowed and Advocate Commissioner was appointed and he inspected the property with the help of surveyor and filed his report on 21.12.2009. The petitioners filed objection to the Commissioner's report on 10.02.2010. The petitioners filed I.A.No.1612 of 2010 for reissue of warrant of commission to the Advocate Commissioner with direction to measure the suit property with the help of head surveyor, based on the old F.M.B sketch. According to the petitioner,

the Advocate Commissioner has not properly measured the suit property. He has noted down the properties in the suit property and wrongly mentioned the identity of the property. Pending this application, the petitioner also filed I.A.No.196 of 2012 to scrap the report of the Advocate Commissioner dated 21.12.2009.

4.The respondents filed counter affidavits in both the applications and opposed the same. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, dismissed both the applications by the separate orders both dated 22.10.2013.

5.Against the said orders dated 22.10.2013 made in I.A.Nos.1612 of 2010 and 196 of 2012 in O.S.No.49 of 2009, the present two Civil Revision Petitions are filed by the petitioners.

6.The learned counsel for the petitioners reiterated the averments made in the petition and contention raised in the revision. In support of his contentions, he relied on the judgment reported in **CDJ 1996 MHC 349 (Vemba Gounder Vs. Pooncholai Gounder)** and submitted that it is the duty of the Court to conduct enquiry and give findings on the objection filed to the report of the

Advocate Commissioner. Without doing so, the trial cannot be proceeded with and report cannot be taken into consideration.

7. Heard the learned counsel for the petitioners and perused the materials available on record. Though notice has been served on the respondents and their names are printed in the cause list, there is no representation either in person or through counsel.

8. The grievances of the petitioners is that the surveyor did not properly measure the suit property and has not correctly noted down the land in which trees are standing. This grievance is not acceptable. The Advocate Commissioner, after issuing notice to the parties, inspected the property and measured the properties in the presence of the parties and their counsels. From the order of the learned Judge, it is seen that the surveyor has measured the property with the help of F.M.B sketch. The petitioners or their counsel did not object to the method of measurement by surveyor. The present application for reissue of warrant cannot be accepted as the reasons stated in the affidavit are not valid reason for reissue of warrant of commission. The petitioners are seeking reissue of warrant of commission and to scrap the report stating that report of the Advocate Commissioner is not correct. The first petitioner had

already filed objection on 10.02.2010 to the report dated 21.12.2009. The learned Judge, considered the report of the Advocate Commissioner and has held that there is no reason to reissue the warrant of commission or scrap the report. The report of the Advocate Commissioner is not final to decide the issue in the suit. It is only to assist the Court in coming to a correct conclusion to decide the issue in the suit. It is for the Court to either accept or reject the report of the Advocate Commissioner, while, considering the evidence let in by the parties during trial. The petitioners have already filed objection to the report and they can examine the Advocate Commissioner with regard to the report. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the orders of the learned Judge dated 22.10.2013.

9. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.11.2017

Index: Yes/No
gsa

V.M.VELUMANI,J.

gsa

To

The Principal District Munsif,
Tirukoilur.



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