

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.1158 of 2014
and
M.P.No.1 of 2014

Victor David .. Petitioner

VS

K.Murugesan .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 10.06.2011 passed by the learned District Munsif, Tirutani in I.A.No.795 of 2010 in O.S.No.282 of 2004.

For Petitioner : Mr.M.A.Lakshmipathi

ORDER

The defendant is the revision petitioner, who has filed this revision, aggrieved by the order passed by the Court below in dismissing the application filed by him to scrap the

Commissioner's report filed in I.A.No.776 of 2007 in O.S.No.282 of 2004 and to file a fresh report from the Taluk Surveyor with the help of the Revenue Inspector.

2. The respondent/plaintiff filed the suit seeking declaration of title with respect to the A scheduled property; for a permanent injunction restraining the defendant from interfering with his peaceful possession except the B scheduled property and for delivery of B scheduled property. Earlier in I.A.No.776 of 2007 a Commissioner was appointed to measure the suit property and to demarcate the boundaries in respect of the suit A scheduled property. The Commissioner has also filed his report. Thereafter, the revision petitioner/defendant has filed the present application in I.A.No.795 of 2010 to scrap the earlier report and prayed for appointment of a fresh commission to inspect the suit property and to file a final report. The said application was dismissed. Challenging the same, the present revision is filed.

3. Heard the learned counsel for the revision petitioner. The revision is kept pending from the year 2014 in the adjourned admission stage itself without even serving notice on the respondent.

4. The suit is of the year 2004, which has been filed for declaration of title and for a permanent injunction. The Commissioner earlier appointed had filed his report even in the year 2006 itself and the revision petitioner/defendant has also filed his objection to the same. Now, after a lapse of five years, this application has been filed seeking to scrap the earlier report dated 22.03.2006 and call for a fresh report. There is no specific reason given in the affidavit filed in support of the said application as to why a second report has to be called for, at this length of time and that too, at the instance of the defendant. It is for the plaintiff to prove his case. Only when the burden is discharged, the onus shifts on the defendant. When the plaintiff himself has not asked for re-issue of the Commission, there is no necessity for the

defendant to file the present application. Even otherwise, nothing has been stated in the affidavit as to the delay in filing the application to scrap the report, which was filed in the year 2006.

5. Since the defendant has already filed his objections and he has also got the liberty to cross examine the Commissioner, there is no need to scrap the report earlier filed and appoint a new Commissioner, at this stage. The trial Court has rightly dismissed the said application by giving a finding that due to passage of time, there may be changes in the physical features of suit properties and appointing of a fresh Commission will not serve the purpose. Further it has held that the defendant only to fill up the lacuna, as an after thought, has filed the present application after a period of five years.

6. In view of the aforesaid reasons, I see no merit in this revision. Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

18.01.2017

vj2

Index: yes/No

Internet: yes

To

The District Munsif, Tirutanni

PUSHPA SATHYANARAYANA,J.,

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