

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **19.01.2017**

CORAM

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

CRP PD Nos.169 and 170 of 2014
and
M.P.No.1 of 2014

Ethirajulu

.. Petitioner

VS

1. Ravi @ Athisezhan
2. Ragothaman

.. Respondents

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 06.06.2013 passed by the learned Additional District Munsif, Cuddalore in I.A.Nos.97 and 98 of 2013 in O.S.No.388 of 2006.

For Petitioner : Mr.R.Sunilkumar
in both CRPs

For Respondents : Served- No appearance
in both CRPs.

COMMON ORDER

The plaintiff is the revision petitioner in both the revisions.

2. The revisions are filed as against the orders passed by the court below in rejecting the applications filed by the petitioner seeking to re-open and to appoint an Advocate Commissioner, after the completion of trial.

3. The suit was originally filed for declaration of title of the plaintiff and for permanent injunction. The schedule of property as mentioned in the plaint is New Survey No.185/2 and Old Survey No.136/1 in Natham property measuring an extent of 149/15 feet. Along with the suit, earlier, the plaintiff filed an application for appointment of an Advocate Commissioner, wherein, the Commissioner was appointed and report was also filed. While so, at this stage, the present application in I.A.No.98 of 2013 is filed for appointing a Commissioner to measure the distance between Survey Nos.191/1 and 191, which is corresponding to the New Survey Nos.136/1 and 141.

4. Heard the learned counsel for the petitioner and despite notice being served on the respondents, no one appeared.

5. It is submitted by the learned counsel for the revision petitioner that only if the properties are measured with the old survey numbers, the dispute can be resolved. Even presuming for a moment that the request of the revision petitioner/plaintiff is acceded to, he has come at the belated stage, after the trial is over. Besides, the said survey numbers 191/1 and 191 are not referred to in the plaint scheduled property. The plaint scheduled property, describes that the suit property is situated in New Survey No.185/2 and old Survey No.136/1. The plaintiff has not established, what is the necessity to measure the property in Survey No.191/1 and 191, at this stage. Though the plaintiff has filed his objections to the report of the earlier Commissioner, he has kept quiet till the trial is over. Having exceeded the time limit given for taking out such an application either without scrapping the report of the earlier Commissioner or re-issue the same Commissioner, the application filed as such, is not maintainable.

6. Though, in support of his contention, the learned counsel for the revision petitioner relied upon the judgments of this Court, reported in **2009(4)CTC 271 [V.K.Ramanathan (deceased D3) and 3 others vs. Jayalakshmi and 5 others] and (2005)3 MLJ 525 [Sivagurunathan vs. Ramalingam and others]**, the same are not applicable to the facts of the present case.

7. In the judgment reported in **(2005)3 MLJ 525 [cited supra]**, this Court has held that when the location of the plaintiff's properties and the extent is denied, the Commissioner ought to have been appointed for effectively adjudicating the dispute. However, in the case on hand, earlier a Commissioner has been appointed and report has been filed. Now the second application has been taken out by the plaintiff only to fill up the lacuna, after the trial is over by seeking to measure the distance between two different survey numbers, what is not mentioned in the plaint schedule, which is not permissible in law.

8. The trial court, after analysing all these factors has rightly dismissed both the applications, as the evidence is already closed. Therefore, I do not find any reason to interfere with the orders passed by the court below.

9. Accordingly, both the civil revision petitions are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

19.01.2017

vj2

Index: yes/No

Internet: yes

To

The Additional District Munsif, Cuddalore

PUSHPA SATHYANARAYANA,J.,

vj2

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