

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.391 of 2017
and
C.M.P.No.1754 of 2017

K.Ramasamy

.. Petitioner

Vs.

1. A.Mahalingam
2. A.Madhaiyan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 03.01.2017 made in I.A.No.335 of 2016 in O.S.No.359 of 2009 on the file of the Principal District Munsif Court, Salem.

For petitioner : Mr.K.Selvaraj

ORDER

The plaintiff is the revision petitioner, challenging the order refusing to appoint Advocate Commissioner for the third time in the same suit. The suit is filed for declaration of title of the plaintiff's to use ABCD, which is shown in the plan as road to reach the suit property and for consequential

injunction. At the instance of the plaintiff, along with the suit, I.A.No.569 of 2009 was filed for appointment of Advocate Commissioner and the same was allowed. The Commissioner has also visited the suit property and filed his report and plan. Thereafter, at the instance of the defendants, I.A.No.903 of 2009 was filed, contending that they were absent during the earlier visit of the Commissioner and as the same was done in their absence, they wanted the same Commissioner to re-visit and file report. The said application was allowed. However, as the same Commissioner was not available, a different Commissioner was appointed. In the Advocate Commissioner's report, he has specifically stated that because of the objection raised by the plaintiff, he could not measure the other properties or the other pathways that are available in the suit property. Learned counsel appearing for the revision petitioner contended that there is a large discrepancy between the first and second Commissioner's report, and therefore, it becomes necessary to appoint another Commissioner to visit and measure the suit property along with the surveyor. The suit is filed in the year 2009. If there is any discrepancy in the report of the Advocate Commissioner, the same may be pointed out to the Court by filing objections, which the plaintiff has already done. It is for the Court to consider both the reports which are on file to adjudicate the dispute between the parties. The learned trial Judge has stated that the application

has been filed after six years from the date of filing of the suit and the physical features would have been changed, and therefore, it is not worthwhile to appoint the Commissioner. Learned counsel for the petitioner submits that since he has got no other document to support his case, he is relying on the report of the Commissioner and the Commissioner has to be appointed to file his report. It is settled principle of law that the report of the Advocate Commissioner is only a piece of evidence and the Commissioner cannot be appointed to gather evidence in support of the case of the parties. In the case on hand, already twice the Commissioner has been appointed at the instance of both parties and there are reports before the Court. Merely because it is not supporting any one party, the same cannot be allowed to scrap and a new report to be obtained by appointing the Advocate Commissioner. These kinds of practice should be deprecated. It is open for the petitioner to cross-examine the Advocate Commissioner.

2. In the light of the above, I find no infirmity in the impugned order passed by the trial Court in dismissing the application. The Civil Revision Petition is dismissed. No costs. Consequently, C.M.P. is closed.

13.02.2017

Copy to

The Principal District Munsif, Salem.

PUSHPA SATHYANARAYANA, J

CS

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