

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1906 of 2011
& M.P.No.1 of 2011

Krishnamurthy .. Petitioner

Vs.

Jayapaul .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.02.2011 made in I.A.No.69 of 2011 in O.S.No.171 of 2007 on the file of the Additional District Munsif, Villupuram.

For Petitioner : Mr.N.Suresh

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 09.02.2011 made in I.A.No.69 of 2011 in O.S.No.171 of 2007, on the file of the Additional District Munsif, Villupuram.

2. The petitioner is the plaintiff and the respondent is the defendant in O.S.No.171 of 2007 on the file of the Additional District Munsif, Villupuram. The petitioner filed the said suit for declaration and recovery of possession. The respondent filed written statement on 16.11.2007 and is contesting the suit. The petitioner has filed an application in I.A.No.772 of 2009 for appointment of an Advocate Commissioner to inspect and measure the property along with surveyor and file report. An Advocate Commissioner was appointed and she inspected the property with the help of Surveyor and filed his report, enclosing the sketch of the surveyor. The petitioner and respondent have filed their objection to the report of the Advocate Commissioner. Again the petitioner filed the present application in I.A.No.69 of 2011 under Order 26 Rule 9 of C.P.C, to re-issue the warrant of Commission, to re-survey the suit property and to file her report with regard to the extent of encroachment by the respondent in the suit property. According to the petitioner, the Advocate Commissioner appointed in I.A.No.772 of 2009 has not mentioned about the extent encroached by the respondent in her report. The Advocate commissioner has stated that she could not measure the property due to the nature of the property. The petitioner has stated that

only a surveyor can measure the property and the surveyor has not given separate report. Therefore, it is necessary to re-issue the warrant of commission to the same Advocate Commissioner to measure the suit property with the help of surveyor and to file the report to the Court.

3. The respondents filed the counter affidavit and opposed the said application and submitted that only to drag on the proceedings, the petitioner has come out the present application. Earlier, the petitioner has filed I.A.No.772 of 2009 for appointment of Advocate Commissioner when the suit was listed for trial. Again the petitioner has filed the present application, after considerable time when the suit was listed again for trial. The advocate commissioner inspected and measured the property with the help of surveyor in the presence of the petitioner and his counsel. The advocate commissioner filed her report along with sketch, with the help of surveyor. The Advocate Commissioner cannot be appointed again to find out whether the respondent has trespassed into the petitioner's property. The petitioner has to prove his allegation regarding the trespassing by the respondent. When there is no defect in the report, there is no necessity for warrant of advocate

commissioner to re-survey the land.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and judgments relied on by the respondent, dismissed the application, holding that the Advocate Commissioner appointed earlier has stated in the report that the property is in irregular shape and could not be measured. The Commissioner filed report along with the plan and sketch given by the surveyor. The surveyor will not give any separate report. As the commissioner has stated that the property could not be measured, no useful purpose will be served by re-issue of warrant of commission and the petition is filed only to drag on the proceedings.

5. Against the order of dismissal dated 09.02.2011, made in I.A.No.69 of 2011 in O.S.No.171 of 2007, the present civil revision petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record. Though notice was served to the respondent and his name is printed in the cause list,

there is no representation either in person or through any counsel.

7. The learned counsel appearing for the petitioner reiterated the averments made in the affidavit, filed in support of the above application and also the contentions raised in the grounds of revision. According to the learned counsel appearing for the petitioner, the re-issue of warrant of commission is necessary in order to find out the extent of the encroachment by the respondent and to obtain the report from the surveyor. This contentions are untenable. An Advocate Commissioner cannot be appointed to collect the evidence for one of the party to the proceedings. The petitioner has to prove his case that the respondent has encroached his property, by letting in acceptable evidence. The report of the Advocate Commissioner is only to assist the Court in arriving at a decision in respect of the issue in the suit. The contentions of the learned counsel for the petitioner that the surveyor has not given any separate report is also without any merits. The surveyor has furnished the plan which has been enclosed by the Advocate Commissioner along with his report. The petitioner has filed earlier application as well as present application, when the suit was listed for trial. This makes it clear

that the intention of the petitioner is only to drag on the proceedings. The learned Judge considering all the averments, dismissed the application by giving cogent and valid

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reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 09.02.2011.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

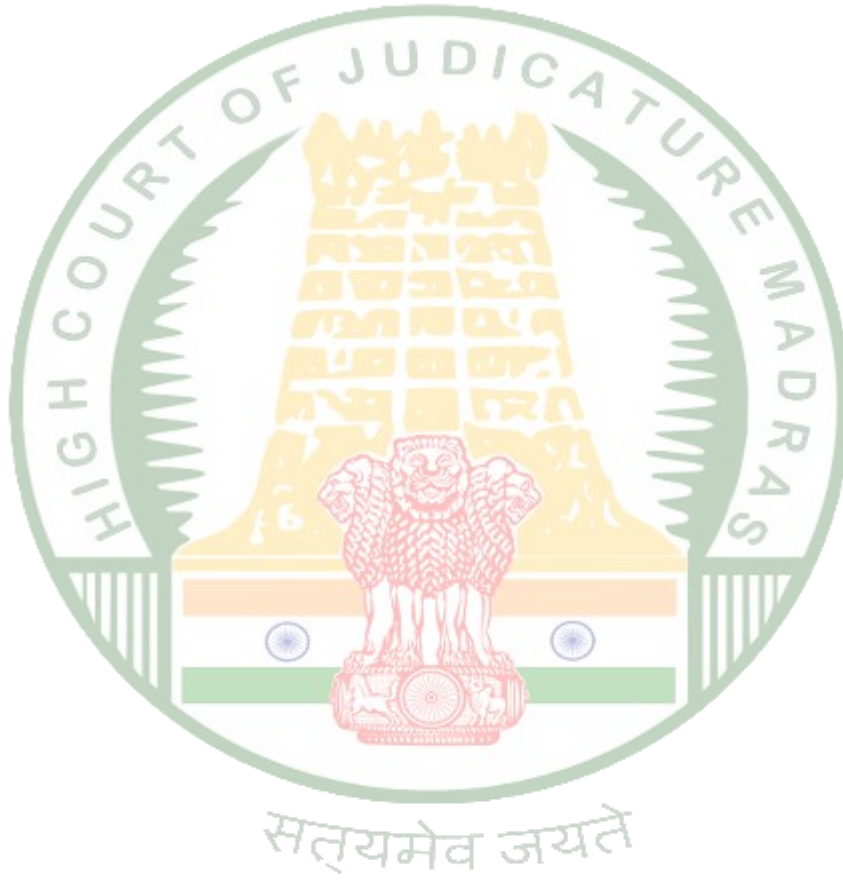
16.08.2017

Index : Yes/No
rna/gsa

To

The Additional District Munsif,
Villupuram.

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