

Reserved on : 08.03.2017

Delivered on : 14.03.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(PD).No.830 of 2017
and C.M.P.No.4090 of 2017

Muniammal

... Petitioner

Vs.

1.Govindaraju

2.Thulasi

3.Govindammal

4.Dhanbakkiam

5.Salammal

6.Rani

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 01.02.2016 made in I.A.No.148 of 2015 in O.S.No.136 of 2013 on the file of the Subordinate Court, Dharmapuri.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr.P.M.Jayachandran

ORDER

Challenging the fair and final order passed in I.A.No.148 of 2015 in O.S.No.136 of 2013 on the file of the Subordinate Court, Dharmapuri, the 6th defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.136 2013 for declaration, recovery of possession, mandatory injunction and permanent injunction.

3.The 6th defendant filed her written statement and is contesting the suit. In the said suit, the plaintiff filed an application in I.A.No.233 of 2013 for appointment of an Advocate Commissioner to note down the physical features. The trial Court appointed an Advocate Commissioner and the Advocate Commissioner also filed his report before the trial Court. The plaintiff filed his objections to the Commissioner's report disputing the findings given by the Advocate Commissioner. Even in the objections dated 20.02.2015, the plaintiff sought to scrap the Advocate Commissioner's report and plan and also sought for appointment of a new Advocate Commissioner.

4.Thereafter, the plaintiff filed an application in I.A.No.148 of 2015 to

scrap the Commissioner's report filed in I.A.No.233 of 2013 and to appoint another Advocate Commissioner to inspect the suit property and file a report. In paragraph-5 of the affidavit filed in support of the petition, the plaintiff has stated that the Advocate Commissioner went to the extent of giving a finding with regard to the relief sought for in the suit by the plaintiff and also has given a finding that the 6th defendant has not made any encroachment in the suit property. Further, in paragraph-6 of the affidavit filed in support of the petition, the plaintiff has stated that the Advocate Commissioner has virtually rendered a finding with regard to the issues involved in the suit. In the affidavit, the plaintiff has also stated that the Advocate Commissioner has not specified in which place Survey No.199 situate and has not given the measurement in respect of the said Survey Number. According to the plaintiff, the Advocate Commissioner had exceeded the scope of the commission. The 6th defendant filed her counter, objecting to the relief sought for by the plaintiff. The trial Court, taking into consideration the case of both parties, allowed the application by scrapping the Advocate Commissioner's report and plan and also appointed a new Advocate Commissioner to note down the physical features.

5.Mr.P.Valliappan, the learned counsel appearing for the petitioner submitted that when the plaintiff had filed his objections to the

Commissioner's report, the trial Court could have considered the objections filed by the plaintiff instead of scrapping the report of the Commissioner. Further, the learned counsel submitted that the Advocate Commissioner's report is not conclusive and the findings should be established by adducing proper evidence by the parties.

6. In support of this contentions, the learned counsel relied upon the following judgments:

(i) 2009 (3) CTC 260 [R.Rajan Vs. Tamil Nadu Electricity Board, having its office at Chennai rep by Superintending Engineer Nilgiris, Electricity Distribution Circle, Ootacamund] wherein this Court held as follows:

“...

7. When all said and done, considering the *pro et contra*, in this factual matrix, I am of the considered opinion that the Lower Court could have very well refrained from scrapping the earlier Commissioner's report, the Lower Court was under the misconception that unless the earlier report was scrapped, it would have no jurisdiction to issue afresh Commissioner Warrant to the Commissioner to revisit the suit property and measure it and submit report. Ordering for revisit so as to gather further particulars is different from a fresh commission being issued and that distinction has not been taken note of by the Lower Court. It is for the Lower Court to decide as to

whether the boundaries as found detailed and delineated in the sale deed, which emerged in favour of the plaintiff should prevail over the boundaries as set out in the map concerned. The Lower Court could have refrained from giving a finding in the order passed in I.A.No.258 of 2007 that the earlier Commissioner committed a gross mistake in measuring the property with reference to the map, etc., and he ought to have measured only with regard to the document of title.”

(ii)2009 (5) CTC 146 [K.Kandasamy and others Vs. The President, Kannampalayam Town Panchayat, Kannampalayam, Palladam and another] wherein this Court held as follows:

“...

13.The decision taken by the Court below to scrap the report of the second Advocate Commissioner-Mrs.Amudha Nagarajan filed pursuant to the order in I.A.No.313 of 1999 in O.S.No.3 of 1998 in I.A.No.315 of 1999 in O.S.No.4 of 1998 and in I.A.No.319 of 1999 in O.S.No.8 of 1998 cannot be sustained for the following reasons:

(i) The first Advocate Commissioner was appointed at the instance of the petitioners/plaintiffs to note down the physical features of the suit property. He filed a report. There is no objection to it and there is no dispute. The respondents/defendants filed subsequent I.As to appoint an Advocate Commissioner to measure the suit property with the help of Taluk Surveyor, which was ordered by the Court

below. The property was measured and a report has been filed.

(ii) The above said report has not been factually disputed and there is no allegation that the measurement done by the Taluk Surveyor is improper and illegal. The procedure adopted by the Advocate Commissioner, while measuring the property with the help of the Taluk Surveyor is not in dispute. Both the plaintiffs and the defendants have filed the Applications for appointment of an Advocate Commissioner for different purposes viz., one is to note down the physical features of the suit property, another one is to measure the suit property with the help of Taluk Surveyor. There is therefore no conflict in the two reports.”

7.Countering the submissions made by the learned counsel appearing for the petitioner, Mr.P.M.Jayachandran, learned counsel for the respondents submitted that since the Advocate Commissioner appointed in I.A.No.233 of 2013 went beyond the scope of the commission and has virtually decided the suit in his report, the trial Court has rightly scrapped the report and appointed a new Advocate Commissioner. Further, the learned counsel submitted that there is no error or illegality in the order passed by the trial Court.

8.On a perusal of the report filed by the Advocate Commissioner in

I.A.No.233 of 2013, it could be seen that he took into consideration the documents produced by the 6th defendant and has given a finding that the 6th defendant is in possession of the property. When the commission was issued for the purpose of noting down the physical features, he has given finding with regard to the possession of the 6th defendant in the suit property. The trial Court, while dismissing the application, observed that the Advocate Commissioner went beyond the scope of the commission by giving his finding with regard to the location of the Marriage Hall and the Shops. The trial Court also found that the Advocate Commissioner's report will not be helpful to the Court in deciding the suit in a proper manner. In the interest of justice, the trial Court has rightly scrapped the report of the Advocate Commissioner finding that the Commissioner's report will not be helpful to the Court. When the Commissioner had gone beyond the scope of the commission and filed his report, taking into consideration the documents filed by the 6th defendant alone, the order of the trial Court scrapping the Commissioner's report is perfectly correct. That apart, the Advocate Commissioner has given his findings with regard to the issues involved in the suit, which he is not entitled to. No doubt, the plaintiff has filed his objections to the Advocate Commissioner's report and even in the objections, he sought for scrapping of the Advocate Commissioner's report and appointment of another Advocate Commissioner.

9. In these circumstances, the judgments relied upon by the learned counsel for the petitioner are not applicable to the present case.

10. The trial Court has rightly appointed a new Advocate Commissioner and has given specific directions to the Commissioner to identify the properties. The Advocate Commissioner should not have given findings beyond the scope of the Commission. That apart, the Advocate Commissioner should not have given findings with regard to the issues involved in the suit. It is also pertinent to note that though the trial Court allowed the application in I.A.No.148 of 2015 on 01.02.2016, the present Civil Revision Petition has been filed only recently (i.e.) after one year. However, on merits, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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14.03.2017

To

1.The Subordinate Court,
Dharmapuri.

M.DURAI SWAMY, J.
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Order made in
C.R.P.(PD).No.830 of 2017
and C.M.P.No.4090 of 2017

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