

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.3852 of 2011
& M.P.No.1 of 2011

Panneerselvam

...

Petitioner

Vs.

Venkatajalapathi

...

Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree passed in I.A.No.374 of 2010 in O.S.No.115 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Vedaranyam dated 16.08.2011.

For Petitioner : Mr.R.Gunasekaran

For Respondent : No appearance

WEB COPY
ORDER

This Civil Revision Petition has been filed against the order and decree passed in I.A.No.374 of 2010 in O.s.No.115 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Vedaranyam dated 16.08.2011.

2. The petitioner is the defendant and the respondent is the plaintiff in O.S.No.115 of 2009 on the file of District Munsif cum Judicial Magistrate Court, Vedaranyam. The respondent filed the above suit for declaration and injunction. The respondent filed I.A.No.243 of 2009 for appointment of Advocate Commissioner to inspect the suit property. An Advocate Commissioner was appointed and he inspected the suit property. At that stage, the petitioner filed I.A.No.374 of 2010 to cancel the order of appointment of Advocate Commissioner in I.A.No.243 of 2009 filed by the respondent.

3. According to the petitioner, he has filed O.S.No.333 of 2000 against the respondent for injunction and in the said suit, an Advocate Commissioner was appointed. He inspected the suit property and filed his report. The said suit was decreed. Appeal filed by the respondent and his father was dismissed. In view of the same, the present suit is hit by principles of resjudicata and prayed for cancellation of the appointment of Advocate Commissioner appointed in I.A.No.243 of 2009. The respondent filed counter and submitted that boundary dispute between the petitioner and the respondent was not solved in the earlier suit and it was held that

the report of the Advocate Commissioner was not correct. The suit property was measured in the year 2009 by a surveyor. Based on the report of the Advocate Commissioner, the present suit is filed. The suit is not hit by principles of resjudicata. After appointment of Advocate Commissioner, the Advocate Commissioner has measured the suit property and he has to file the report and prayed for dismissal of the application.

4. Before the learned Judge, no oral evidence was let in by the parties. Petitioner marked three documents as Exs.P1 to P3. The respondent marked two documents as Exs.R1 & R2.

5. The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application holding that if the petitioner is aggrieved by appointment of Advocate Commissioner, his remedy is only by filing revision challenging the said order. The Court has no power under Section 151 CPC to reconsider its earlier order and whether the present suit is hit by principles of resjudicata can be decided only in the main suit.

6. Against the said order dated 16.08.2011 passed in I.A.No.374 of 2010 in O.S.No.115 of 2009, the present Civil

Revision Petition has been filed.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice has been served on the respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

8. The respondent has filed the suit for declaration that the respondent's southern boundary is petitioner's northern boundary by appointing an Advocate Commissioner to measure the properties and to file his report and for injunction. In the suit, an Advocate Commissioner was appointed in the application filed by the respondent. From the materials available on record, it is seen that the Advocate Commissioner has inspected the property and measured the same and filed his report. The petitioner filed present application to set aside the appointment of Advocate Commissioner appointed without notice to him and re-hear the application. The application was dismissed by the learned Judge holding that the Court has no power to re-consider its own order and remedy available for the petitioner was only to file a revision against the order of appointment of Advocate commissioner.

9. It is well settled that the report of the Advocate Commissioner is not final and it is only to assist the court to decide the issue in the suit. The Court may accept or reject the report filed by the Advocate Commissioner. In the above circumstances, I do not find any irregularity or illegality in the order impugned in this revision.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.08.2017

Index : Yes/No
rgr

To

The District Munsif cum Judicial Magistrate Court,
Vedaranyam

WEB COPY

V.M.VELUMANI, J.

rgr



C.R.P.(PD)No.3852 of 2011

WEB COPY

16.08.2017