

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.P.D.No.2804 of 2016
and C.M.P.No.14256 of 2016

Jayarama Reddiar

.. Petitioner

-Vs-

Sivanandham

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 15.12.2015 passed in I.A.No.771 of 2015 in O.S.No.32 of 2007 on the file of the I Additional District Munsif Court and Judicial Magistrate No.I, Ulundurpet.

For petitioner ... Mr.P.Jagadeesan

O R D E R

The first plaintiff is the revision petitioner challenging the order refusing to re-issue the warrant of the commissioner to measure the property in a suit for declaration of title.

2. Admittedly, at the first instance in I.A.No.126 of 2007, a Commissioner was appointed and report was also filed on 21.02.2012. The said report and plan were objected to by the petitioner / first plaintiff and sought for appointment of another Commissioner in I.A.No.848 of 2012, which was allowed. The said second Commissioner also filed his report on 24.02.2015. The petitioner / first plaintiff also seems to have been filed the objections stating that the total extent in the suit survey no is 2.27 cents, in which, the first plaintiff claims 2.04 cents.

3. According to the revision petitioner / first plaintiff, when the commissioner went to measure the suit property, namely, 2.04 cents, there were thorny bushes in the suit property and unless they are removed, it would be difficult to measure the property. Despite the first plaintiff arranging for a JCB vehicle, it was opposed by the respondent / defendant. Therefore, the measurements were not taken by the Commissioner. However, without taking any measurements of

the land, the Commissioner has filed his report and plan. The petitioner has filed his objections to the said report. According to the petitioner, the suit property of 2.04 cents, has not been measured by the Advocate Commissioner, whereas he has filed his report and sketch showing the Northern 2.04 cents. Therefore, the present petition is filed for re-issuing the warrant to the same Commissioner to measure the property again.

4. The said application was resisted by the respondent / defendant stating that there was no such difficulty for the Commissioner to measure the property and already two Commissioners have filed their reports and the petitioner/ first plaintiff has also filed his objections. Hence, re-issuing of the same Commission should not be allowed. The learned I Additional District Munsif and Judicial Magistrate No.I, Ulundupet, on consideration, has dismissed the application.

5. Admittedly, without scrapping the first Commissioner's report, a second Commissioner has been appointed. Though the

petitioner has stated that when the second Commissioner has difficulty in measuring the property because of the thorny bushes on the land, there is no such evidence for the same. The Commissioner also seems to have filed the report and sketch. Considering the same, excepting the statement of the first plaintiff, there is no other evidence to show that the property could not be measured by the Advocate Commissioner because of the thorny bushes. Even the Commissioner has not expressed such difficulty in his report. Therefore, there is no truth in the statement of the first plaintiff. As stated by the learned I Additional District Munsif and Judicial Magistrate No.I, Ulundurpet, the first plaintiff has already filed his objections to the report of the Commissioner and it is also open to him to cross examine the Commissioner to point out the discrepancies in his report. The report of the Commissioner is not the final piece of evidence. It may be considered by the Court, if there is no objection to the same. It is always open to the petitioner / first plaintiff to establish his right through other evidence also. Therefore, asking for the re-issuance of the same Commission, who was appointed for the second time, was

rightly refused by the trial Judge.

6. The learned counsel for the petitioner contended that as the trial is yet to commence, it will be useful, if the warrant of the Commission is re-issued to measure the property again or an adverse inference would be drawn against him. I do not think such an argument is sustainable, in view of the fact that it will be always open to the petitioner / first plaintiff to examine the Commissioner and the Court can consider the objections to the report of the Commissioner, if any, which may be raised by the petitioner in this regard for proper adjudication of the suit.

7. In the light of the above, there is no infirmity in the order passed by the learned trial Judge.

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

02.01.2017

srn
To

The I Additional District Munsif Court
and Judicial Magistrate No.I,
Ulundurpet.

PUSHPA SATHYANARAYANA.J

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