

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3414 of 2012
and M.P.No.1 of 2012

Ponnusamy

.. Petitioner

Vs.

S.Subha
Rep. by its Power Agent
S.Velusamy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.07.2012 made in I.A.No.346 of 2012 in O.S.No.52 of 2009 on the file of the District Munsif Court, Kangayam.

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For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Lakshmanasamy

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.07.2012 made in I.A.No.346 of 2012 in O.S.No.52 of 2009 on the file of the District Munsif Court, Kangayam.

2. The petitioner is defendant and respondent is the plaintiff in O.S.No.52 of 2009 on the file of the District Munsif Court, Kangayam. The respondent filed suit for permanent injunction restraining the petitioner from causing any damage to north-south wall and for mandatory injunction to restore the damaged portion of the north-south dividing wall. The petitioner filed written statement on 24.10.2009 and is contesting the suit. Along with the suit, the respondent filed I.A.No.99 of 2009 for appointment of Advocate Commissioner. The said application was allowed and the Advocate Commissioner was appointed. He inspected the suit property and filed his report on 03.04.2009. Additional written statement was filed by the petitioner on 06.09.2011. While so, the petitioner filed I.A.No.346 of 2012 for appointment of Advocate Commissioner to measure the suit property belonging to the petitioner and respondent with the help of surveyor on the ground

that the report of the Advocate Commissioner filed earlier is defective and does not contain full particulars. The petitioner filed objection to the Advocate Commissioner's report, the same was not considered by the learned Judge and no order has been passed in the objection by the learned Judge.

3. The respondent filed counter affidavit opposing the said application and submitted that earlier Advocate Commissioner was appointed in I.A.No.99 of 2009, he filed his report after inspecting and measuring the suit property on 03.04.2009 and the said report contained all the necessary particulars. The respondent's father has sold 2 Acres of land to the petitioner on the western side of the suit property. In the sale deed itself, it has been clearly mentioned that if any shortage in extent of land, the petitioner is not entitled to claim the same on the eastern side.

4. Before the learned Judge, parties have not let in any oral evidence. The respondent has marked the sale deed on his behalf.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, document filed by the respondent and

report of the Advocate Commissioner filed in I.A.No.99 of 2009, dismissed the application holding that it is for the parties to prove their case based on the document and oral evidence.

6. Against the order dated 03.07.2012 made in I.A.No.346 of 2012, the present civil revision petition is filed by the petitioner/defendant.

7. Heard both sides and perused the materials on record.

8. The respondent has filed suit for permanent injunction and mandatory injunction. According to the respondent, his father sold 2 Acres of land on the western side of the suit property and it is made clear in the sale deed itself that if extent is less than 2 Acres, the petitioner is not entitled to claim on the eastern side of the property sold to him.

9. From the materials on record, it is seen that in I.A.No.99 of 2009, Advocate Commissioner was appointed, he inspected the suit property, measured the same and filed his report. The petitioner has already filed objection to the Advocate

Commissioner's report.

10. It is well settled that the report of the Advocate Commissioner is not a final one and the same is only to assist the Court. Further, the Advocate Commissioner cannot be appointed to collect evidence. The Court may accept or reject the report of the Advocate Commissioner. In view of the nature of the relief claimed by the respondent and objection of the petitioner, the learned Judge has held that it is for the parties to prove their case. The learned Judge considering all the above facts dismissed the application by giving cogent and valid reason. There is no irregularity or illegality in the order of the learned Judge dated 03.07.2012 warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. The suit is of the year 2009, the learned District Munsif, Kangayam, is directed to dispose O.S.No.52 of 2009 on merits and in accordance with law in any event, not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

21.07.2017

Index:Yes/No
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V.M.VELUMANI,J.

Kj

To
The District Munsif, Kangayam.



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