



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.1500 of 2014 (PD)

and

M.P (MD) No.1 of 2014

K.S. Ramasamy

...Revision Petitioner/Respondent/
Plaintiff

Vs

1. Kannan Iyengar

2. K. Balaji

..Respondents/Petitioners/Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the order of the learned II Additional District Munsif Court, Tiruchirappalli, dated 23.06.2014 allowing I.A.No.146 of 2014 in O.S.No.1110 of 2011.

Party-in-person : Mr. K.S. Ramasamy

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order passed by the learned II Additional District Munsif Court, Tiruchirappalli, dated 23.06.2014, allowing I.A.No.146 of 2014 in O.S.No.1110 of 2011.

2.The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed suit in O.S.No.1110 of 2011 for permanent injunction. The respondents filed written statement on 04.07.2012. The petitioner filed I.A.No.530 of 2011 for injunction and I.A.No.531 of 2011 for appointment of Advocate Commissioner to inspect the suit property. In I.A.No.531 of 2011, an Advocate Commissioner was appointed and she Inspected the suit property and filed her report. The second respondent filed I.A.No.146 of 2014 for reissue of warrant to the same Advocate Commissioner or to some other Advocate Commissioner with a direction to get the assistance of Surveyor to measure the property of the parties. According to the respondent, the Advocate Commissioner appointed earlier has filed her report stating that compound Wall is not straight and only with the help of Surveyor, the compound Wall can be properly measured.

<https://hcservices.courts.gov.in/hcservices/>
3. In the said I.A.No.146 of 2014, the petitioner filed counter and denied the averments made by the second respondent and



submitted that already commissioner was appointed earlier and inspected the suit property and filed her report stating that the breadth of the respondents property is 9.1 feet from north to south. The suit wall is exclusively belonged to the petitioner herein. The suit is ripe for trial. Only with an intention to drag on the proceedings, the second respondent has filed the present application. He further stated that there is no dispute with regard to property and Advocate Commissioner already measured and filed her report. The respondents have not filed any objection to the Commissioner's report already filed and prayed for dismissal of the application.

4.The learned Judge after considering the averments made in the affidavit and counter affidavit and considering the materials on record, allowed the application.

5.Against the said order, the petitioner has filed the present Civil Revision Petition.

6.The petitioner/Party-in-person submitted that the learned Judge failed to see that there is no dispute with regard to suit property. The Advocate Commissioner was already appointed and she has inspected the suit property and filed her report and respondent has not filed any objection. Even if the property is measured with the help of surveyor, the report will not be of any assistance to decide the issue in the suit on merits. If the respondent is aggrieved, he has to file an application to scrap the report of the Advocate Commissioner already filed. The application filed for re-issue of warrant, is not maintainable, unless the earlier report is scrapped. The learned Judge in cursory manner considered the materials and passed an order and caused injustice to the petitioner.

7. In support of his contention, he relied on the judgment reported in **C.R.P (PD) No.2134 of 2008, dated 14.10.2008**, wherein at paragraph 6 it has been held as follows:-

"6.The learned counsel appearing for the respondent would on the other hand submit that Commissioner who inspected the suit property had given measurement of the entire suit property. There is no necessity of measuring the suit property once again for the purpose of arriving at to a correct conclusion in the suit property. If the plaintiff really wants to get measure the entire property once again, she should have sought for scrapping of the earlier report and then only the Court could direct a fresh commissioner or the same Commissioner to measure the entire property."



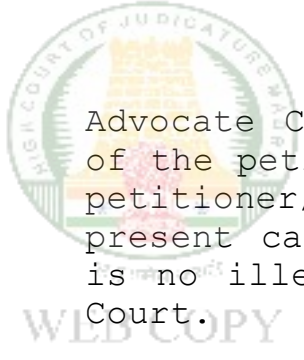
"6.Learned counsel for the respondents/plaintiffs submitted that the appointment of second Advocate Commissioner by the trial Court in I.A.No.324 of 2002, which was filed for local inspection by the Court itself is not proper without recording any finding that the plan and the report of the first Advocate-Commissioner are not satisfactory and without setting aside the first Commission appointed at the instance of the plaintiffs, who after inspecting the suit properties, during which time the defendant was present near the suit properties, has filed report along with the rough plan. In this regard, the learned counsel further submitted that if the report and rough plan of the first Advocate Commissioner are not satisfactory, necessary steps could have been taken by the defendant for re-issue of the warrant to the same commission for the purpose of rectifying defects if any. In any event, the learned counsel submitted that the report and the rough plan of the first advocate-commissioner cannot be scrapped, since after inspecting and noting down the physical features at the time of filing the suit, the report and rough plan have been filed by the first advocate-commissioner and as such, the report and rough plan of the first advocate-commissioner, cannot be scrapped and accordingly the trial court has rightly dismissed the petition and such finding does not call for any interference by this Court under Section 115 C.P.C.,"

10.As rightly argued for the plaintiffs, the very appointment of the second Advocate-Commissioner without setting aside the report and plan of the first advocate-commissioner itself is not proper and therefore, the report and rough plan of the second advocate-commissioner cannot form part of the records unless the report and rough plan of the first advocate-commissioner are eschewed."

8.Though the respondent has entered appearance through Advocate, there is no representation either in person or through counsel.

9.I have heard the Petitioner/party-in-person and also perused all the materials on record.

10.From the records, it is seen that the Advocate Commissioner appointed earlier inspected the suit property and filed her report. In the report, she has stated that the compound Wall can be properly measured only with the help of Surveyor. In the report, it is stated that the compound wall is not straight and it can be measured only with the help of Surveyor. The learned Judge considering the report of Advocate Commissioner, accepted the contentions of the respondent for re-issue of warrant to the



Advocate Commissioner. In view of this fact, various contentions of the petitioner is un-sustainable and judgments relied on by the petitioner/party-in-person are not applicable to the facts of the present case. The order of the learned Judge is proper and there is no illegality or irregularity warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

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To

The II Additional District Munsif Court,
Tiruchirappalli.

GJM/MR/1.3.17-4p-2C

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