



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD)No.498 of 2016(PD)

and

C.M.P. (MD)No. 2150 of 2016

Chelladurai

...Petitioner/Petitioner/Plaintiff

Vs

Kulanthaisamy

..Respondent/ Respondent/ Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to call for the records and set aside the Fair and Decreetal order, dated 01.12.2015 in I.A.No.274 of 2013 in O.S.No.40 of 2013 passed by the District Munsif Court, Thuraiyur and allow this Civil Revision Petition.

For Petitioner : Mr. H. Lakshmi Shankar

For Respondent : Mr. N. Ananda Kumar

ORDER

The petitioner has filed this Civil Revision Petition to call for the records and set aside the Fair and Decreetal order, dated 01.12.2015 in I.A.No.274 of 2013 in O.S.No.40 of 2013 passed by the District Munsif Court, Thuraiyur and allow this Civil Revision Petition.

2.The petitioner is the plaintiff and the respondent is the defendant in the suit. The petitioner filed suit in O.S.No.40 of 2013 before the District Munsif, Duraiyur for declaration and injunction. He filed an application in I.A.No.89 of 2013 for appointment of Advocate Commissioner. An Advocate Commissioner was appointed to inspect the suit property. He measured the property with the help of surveyor on 19.03.2013. According to the petitioner, Advocate Commissioner did not measure the property with the help of surveyor as per Rules by using links, but measured the property by using the measuring tape. On that date inspection was not completed. Advocate Commissioner issued an notice to inspect the property on 27.04.2013. The petitioner, on the said notice itself endorsed his objection and also the fact
an application for re-placing the Advocate Commissioner by senior member of the bar and served copies of the



affidavit and petition to the Advocate Commissioner. The Advocate Commissioner did not inspect the property on 27.04.2013. Therefore, he filed I.A.No.274 of 2013 for replacing an Advocate Commissioner by Senior member of the Bar.

3.The respondent filed counter affidavit and opposed the said application and submitted that the petitioner did not object to the method of measuring the property but co-operated with the Advocate Commissioner in measuring the property. The property was measured from morning to evening. The petitioner along with his Advocate was present all along. He did not object either in writing or orally. The Advocate Commissioner completed the inspection on that day and laid Survey stone. The petitioner, his wife and one Rajendran removed the survey stones and tress-passed into respondent's property. The respondent gave a complaint to Inspector of Police, Uppiliyapuram Police Station and the case has been registered in Cr.NO.107 of 2013. The present application is filed only on the ground that the report of the Advocate Commissioner is not in favour of the petitioner and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit and counter affidavit and materials available on record, dismissed the application on the ground that the petitioner has not filed any objection to the Advocate Commissioner's Report as well as has not taken any steps for scrap the report of the Advocate Commissioner and applied the Ratio in the judgment reported in 2009(1) TLNJ 316(Civil).

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

6.The learned counsel appearing for the petitioner submitted that the petitioner has objected the method of measurement of Advocate Commissioner with the help of Surveyor. The petitioner objected to second inspection by Advocate Commissioner on 27.04.2013. The petitioner also filed an application for replacing the Advocate Commissioner by Senior member of the Bar. While the said application was pending without inspecting the property, the Advocate Commissioner filed his report. In view of the pendency of the application for re-placing the Advocate Commissioner, the learned Judge is not correct in dismissing the application on the ground that the petitioner has not filed any objection to the report of the Advocate Commissioner and did not take any steps to scrap the report of the Advocate Commissioner and prayed for allowing the Civil Revision Petition.

7.The learned counsel for the respondent submitted that at the <https://hdservices.courts.gov.in/hdservices/> on, the petitioner or his Advocate did not object to measuring the property. The petitioner has not filed any objection to the report of the Advocate Commissioner and did not



take any steps to scrap the report. When the report of the Advocate Commissioner is on record, the learned Judge has rightly applied the ratio of the judgment of this Court reported in 2009 (1) TLNJ 316(Civil) and dismissed the application. There is no error in the said order.

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8.I have heard the learned counsel appearing for the petitioner and the respondent and also perused the entire materials on record.

9.From the materials on record, it is seen that the petitioner endorsed his objection in the memo, dated 23.04.2013 issued by the Advocate Commissioner. He also filed an application for re-placing the Advocate Commissioner by a Senior member of the bar on 25.04.2013 itself and served the copies of the affidavit and petition on the Advocate Commissioner. While the said application was pending Advocate Commissioner filed report after 6 months of filing I.A.No.274 of 2013. The pendency of I.A., for replacing the Advocate Commissioner and Advocate Commissioner filed report while the said application was pending was not disputed by the learned counsel for the respondent.

10.From the order of the learned Judge, it is seen that the learned Judge dismissed the application only on the ground that the petitioner has not taken any steps to scrap the report of the Advocate Commissioner or filed any objection. The learned Judge failed to consider the fact that already the petitioner has filed an application for re-placing the Advocate Commissioner on 25.04.2013 itself and Advocate Commissioner filed his report only on 04.10.2013 after six months of filing the petition by the petitioner for replacing the Advocate Commissioner. In the circumstances, the contention of learned counsel for the petitioner that learned Judge erred in dismissing the application without considering the fact has considerable force. The learned Judge committed irregularity in not considering the fact that the Advocate Commissioner filed his report while application filed by the petitioner for replacing the Advocate Commissioner was pending.

11.In the circumstances, the learned Judge has committed material irregularity and the order in I.A.No.274 of 2013 is set aside and the Civil Revision Petition is allowed and the learned District Munsif, Thuraiyur is directed to appoint a Senior member of the Advocate Commissioner to execute the warrant as per the earlier warrant of Commission. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar



To
The District Munsif,
Thuraiyur.

Copy to : The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.N.ANANDA KUMAR Advocate in SR. No.5809

+1cc to Mr.H.LAKSHMI SHANKAR Advocate in SR. No.5289

js/pn/SAR.3/21.02.2017/4P-5C

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