



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.1535 of 2013 (NPD)

and

M.P. (MD) No.1 of 2013

S.Ramachandran .. Petitioner/Petitioner/Appellant
Vs.

S.Chinnaraj .. Respondent/Respondent/Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 26.07.2013, made in I.A.No.18 of 2013 in A.S.No.8 of 2012, on the file of the Subordinate Court, Periyakulam.

For Petitioner : Mr.R.Subramanian
For Respondent : Mr.N.Dilipkumar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 26.07.2013, made in I.A.No.18 of 2013 in A.S.No.8 of 2012 on the file of the Subordinate Court, Periyakulam.

2. The petitioner is the defendant in O.S.No.158 of 2008 on the file of the District Munsif Court, Periyakulam and appellant in A.S.No.8 of 2012 on the file of the Subordinate Court, Periyakulam. The respondent/plaintiff filed the suit for injunction. After contest, the said suit was decreed, vide judgment and decree, dated 17.02.2012. Against the said judgment and decree, the petitioner filed A.S.No.8 of 2012. In the said first appeal, the petitioner filed I.A.No.18 of 2013 for appointment of Advocate Commissioner to inspect the suit property and measure the same with the help of Surveyor. The petitioner has stated that the respondent filed application for appointment of Advocate Commissioner to inspect the suit property and to file his report in the suit in O.S.No.158 of 2008. An Advocate Commissioner was appointed and he inspected the property and filed his report. He did not take any assistance of the Surveyor for measuring the property. Therefore, the petitioner has filed the

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presenting in contending that unless the suit property is measured by the Advocate Commissioner with the help of Surveyor, the petitioner will be put to irreparable loss and hardship.



3. The respondent filed counter affidavit and denied all the averments made in the affidavit. According to the respondent, in the suit, the Advocate Commissioner was appointed. He inspected the suit property and filed his report. The petitioner did not file any objection to the Advocate Commissioner's report and in the cross-examination, he admitted that he has no objection for the Advocate Commissioner's report. Therefore, the present petition is not maintainable and is devoid of merits.

4. The learned Subordinate Judge, Periyakulam, considering the averments mentioned in the affidavit and the counter affidavit and also considering the materials available on record and taking note of the fact that already an Advocate Commissioner has been appointed in the suit by the Trial Court and he filed his report, the petitioner did not object to the said report filed by the Advocate Commissioner. If an Advocate Commissioner is appointed to measure the suit property with the help of Surveyor that will go against the fact decided by the Trial Court and dismissed the application.

5. Against the said order of dismissal dated 26.07.2013, the petitioner has come with out with the present Civil Revision Petition.

6. The learned counsel for the petitioner submitted that the learned Subordinate Judge dismissed the application only on the ground that the petitioner did not file any objection to the Advocate Commissioner's report. On the other hand, the petitioner filed objection to the Advocate Commissioner's report. The Advocate Commissioner was appointed set *ex-parte* without any notice to the petitioner. The issue in the suit is whether the lane between the petitioner's property as well as the respondent's property is exclusively belonged to the respondent or not. If the Surveyor measured both the properties and filed his report, the work of the Court would be minimized. Therefore, he prayed for allowing the Civil Revision Petition.

7. The learned counsel for the respondent submitted that an Advocate Commissioner was appointed by the Trial Court and he inspected the suit property and filed his report. The petitioner did not file any objection. On the other hand, in the cross-examination, he admitted that he has no objection to the report of the Advocate Commissioner. The petitioner has not taken any steps to cancel or to scrap the report of the Advocate Commissioner. Therefore, the present application for appointment of Advocate Commissioner in the first appeal, is devoid of merits and is not maintainable. The learned Subordinate Judge has properly appreciated all the materials and dismissed the application and prayed for dismissal of the Civil Revision Petition.



8. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused materials available on record.

9. The issue in the suit is whether the lane in between the petitioner's property and the respondent's property exclusively belongs to the respondent or not. To decide the said issue, inspection and measure the property by the Advocate Commissioner, is not necessary. It is pertinent to note that the suit is for injunction. It is for the respondent to prove his claim based on the evidence let in by him.

10. From the materials available on record, it is seen that both the parties have admitted that the Advocate Commissioner was appointed at the instance of the respondent and the Advocate Commissioner has filed his report after inspection of the suit property. The learned counsel for the respondent contended that the petitioner did not file any objection to the Advocate Commissioner's report. But, in the cross-examination, he has stated that he has no objection to the Advocate Commissioner's report. On the other hand, the learned counsel for the petitioner submitted that an objection has been filed to the report of the Advocate Commissioner. But, the learned counsel for the petitioner did not dispute the contention of the learned counsel for the respondent that the petitioner has stated no objection for the Advocate Commissioner's report. It is seen that the petitioner has not taken any steps to scrap the report of the Advocate Commissioner or to file any application for re-issuance of warrant of Commission to the same Advocate Commissioner in the Trial Court itself. It is well settled that unless the report of the Advocate Commissioner is set aside, another Advocate Commissioner cannot be appointed. In view of the settled principles of law, the petition filed for appointment of Advocate Commissioner in the appeal is not maintainable. In the circumstances, the learned Subordinate Judge has considered properly by exercising the jurisdiction conferred on him. There is no irregularity or illegality in the said order warranting interference by this Court.

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

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar



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To

The Subordinate Judge, Periyakulam.

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Copy To : The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.N.Dilipkumar, Advocate Sr.No.6080
+1CC to Mr.R.Subramanian, Advocate Sr.No.5834

GJM/CM/MSA/10.2.17-4p-5c

Order in
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and
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