



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.42 of 2013 (PD)
and
M.P.(MD)No.1 of 2013

M.S. Balasubramanian ...Petitioner/Respondent/Plaintiff

Vs

Elanchezhiyan @ Selvaraj ... Respondent/Petitioner/1st Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to call for the records of the case and set aside the decree of the District Munsif, Sivagangai and allow the Civil Revision Petition.

For Petitioner : Mr.N.Tamil mani
For Respondent : Mr.V.Janakiramulu

ORDER

The petitioner has filed this Civil Revision Petition to call for the records of the case and set aside the decree of the learned District Munsif, Sivagangai.

2.The petitioner is the plaintiff and the respondent is the first defendant in the suit. The petitioner filed suit in O.S.No.32 of 2011 before the District Munsif Court, Sivagangai, for declaration to declare that the property mentioned in the plaint schedule is common pathway for the petitioner and the respondent and for injunction. The respondent and second defendant filed I.A.No.381 of 2011 for appointment of Advocate Commissioner to inspect the suit property and to file his report. The said application was allowed and an Advocate Commissioner was also appointed. The Advocate Commissioner inspected the suit property and filed his report. The respondent filed I.A.No.654 of 2011 to set aside the Commissioner's Report and plan already filed in I.A.No.381 of 2011. According to the respondent, the Commissioner did not fix boundaries in T.S.Nos.30 and 31 on the southern side, by measuring the property on four directions, but measured only from South-Eastern corner. The respondent as well as adjacent owner one Deenadhayalan objected to the same. The Advocate Commissioner did not accept the objections made by the petitioner and said Deenadhayalan. The Advocate



Commissioner filed his report and plan. The report of the Advocate Commissioner is not clear with regard to T.S.Nos.30 & 31.

3.The petitioner filed counter affidavit and opposed the said application and submitted that the same Commissioner can be re-appointed with a direction to measure the property and the report of the Advocate Commissioner filed already need not be set aside.

4.The learned Judge considering the averments made in the affidavit and counter affidavit and the report of the Advocate Commissioner that he measured the property only from South-East portion without considering the objections of the adjacent owner Deenadhayalan and the respondent herein, allowed the application I.A.No.654 of 2011 filed by the respondent to scrap the report and plan already filed in I.A.No.381 of 2011.

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

6.The learned counsel appearing for the petitioner submitted that there is no necessity to scrap the report of the Advocate Commissioner and for appointment of fresh Commissioner. A surveyor or other competent person could have been directed to ascertain the boundaries of the suit property by measuring on all directions without scraping the report. The same Commissioner could have been directed to measure the property with the help of surveyor.

7.The learned counsel for the respondent submitted that originally Commissioner measured the property only from the South-Eastern Corner, ignoring the objections made by the respondent as well as the adjacent owner Deenadhayalan. Unless, earlier report is scraped, fresh Advocate Commissioner cannot be appointed. In support of his contention, he relied on the judgment reported in **2009(2) CTC 205 (Anna Sudha Devi vs. P.George Samuel)**. He also submitted that the order of the learned Judge scraping the report of the Advocate Commissioner is valid and therefore, prayed for dismissal of the Civil Revision Petition.

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

9.On the application filed by the respondent herein, Advocate Commissioner was appointed to measure the suit property. The grievance of the respondent is that an Advocate Commissioner did not measure the suit property in T.S.Nos.3 & 31 by measuring on all sides. He measured the property only from South-Eastern corner. It is not disputed by the petitioner. In the circumstances, it is clear that the report of the Advocate Commissioner does not reflect the correct identification of properties in T.S.Nos.30 & 31. The learned Judge has rightly allowed the application and scraped the report of the Advocate Commissioner. The judgment relied on by the counsel for



the respondent is squarely applicable to the facts of the present case.

10. In the result, the Civil Revision Petition is devoid of merits and there is no illegality or irregularity warranting interference by this Court and hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The District Munsif, Sivagangai.

Copy To:-

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

+ 1 CC TO Mr. N. TAMIL MANI, ADVOCATE IN SR No. 5579
+ 1 CC TO Mr. V. JANAKIRAMULU, ADVOCATE IN SR No. 5749

AM

TE/SV-MMS : 21/02/2017 : 3P/5C

C.R.P (MD) No. 42 of 2013 (PD)
and
M.P. (MD) No. 1 of 2013
01.02.2017