

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-03-2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.R.P.No.1248 of 2018

and

C.M.P.No.6383 of 2018

Duraisamy ... Petitioner

Vs

1.M.Saravanakumar

2.Tamil Nadu Electricity Board
Rep. by Chairman,
Chennai Mount Road, Chennai.

3.Tamil Nadu Electricity Board,
Rep. by Assistant Executive Engineer,
Senthamangalam, Namakkal Taluk,
Namakkal District.

... Respondents

PRAYER : Civil Revision Petition filed under article 227 of constitution of India to set aside the fair and decreetal order dated 16.11.2017 in I.A.No.978 of 2015 in O.S.No.228 of 2011 on the file of Additional District Munsif, Namakkal.

For Petitioner : Mr.I.Abrar Md Abdullah

ORDER

The revision petition has been filed against the dismissal of the application in I.A. No. 978 of 2015 filed by the petitioner/1st defendant to re-issue the warrant to the same commissioner, who visited the Suit property on 14.10.2012 and filed a report, on the ground that the survey was not conducted with the help of Government surveyor and the sketch filed by the advocate commissioner is the sketch kept by the Village Administrative Officer.

2.Heard the learned counsel for the petitioner.

3.The suit is filed by the 1st respondent for declaration and for permanent injunction. A perusal of the records would show that the written statement has been filed as early as on 10.02.2012 and the suit is ripe for trial. The 1st respondent/plaintiff is said to have filed an application, seeking appointment of advocate commissioner to visit the property, measuring the property and file a report.

4.It is evident from the records that the said advocate commissioner visited the property after giving notice to the petitioner as well as to the 1st respondent/plaintiff on 15.05.2012. The Commissioner had to measure the property with the help of the Government surveyor. Therefore, the advocate commissioner after giving notice to the petitioner and the 1st respondent/plaintiff inspected the property on 14.10.2012. Even though the prior notice was given to the petitioner, neither he nor his counsel was present. Further, it is evident from the trial Court's order that the measurement was made by the advocate commissioner with the help of the taluk surveyor and therefore, the contention of the petitioner that the measurement was not made with the help of the Government surveyor is not correct and it is the petitioner, who failed to be present during the inspection. Therefore, it is very clear that a false contention has been made by the petitioner and is contrary to the facts. In any event, it is open to the petitioner to file an objection to the advocate commissioner's report and to cross examine the advocate commissioner, if so advised. Therefore, the application to re-issue the warrant to the advocate commissioner for taking measurement with the help of a Government surveyor was rightly dismissed by the trial Court. Therefore the order cannot be interfered with. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

5. Since the suit has been filed during the year 2011, the trial Court is directed to dispose of the suit on or before 31.07.2018.

Sd/-

सत्यमेव जयते Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

sai

To

The Additional District Munsif, Namakkal.

Copy to: The Record Keeper,

Vr Section, High Court, Madras.

C.R.P.No.1248 of 2018

PA (CO)

EU (20/04/2018)

<https://hcservices.ecourts.gov.in/hcservices/>