

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.984 & 985 of 2015
& M.P.No.1 of 2015

K.Gunasekaran

.. Petitioner in
both C.R.Ps.

Vs.

K.Ayyavu

.. Respondent
in both C.R.Ps.

PRAYER IN C.R.P.No.984/2015: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 17.07.2014 made in I.A.No.44 of 2014 in I.A.No.230 of 2012 in O.S.No.280 of 2012 on the file of the II Additional Subordinate Court, Salem.

PRAYER IN C.R.P.No.985/2015: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 01.09.2014 made in I.A.No.Nil of 2014 in I.A.No.230 of 2012 in O.S.No.280 of 2012 on the file of the II Additional Subordinate Court, Salem.

For Petitioner : Mr.C.Jagadish

For Respondent :Mr.T.Murugamanickam,
Senior Counsel
for M/s.Zeenath Begum

COMMON ORDER

C.R.P.No.984 of 2015 is filed to set aside the fair and decretal order dated 17.07.2014 made in I.A.No.44 of 2014 in I.A.No.230 of 2012 in O.S.No.280 of 2012 on the file of the II Additional Subordinate Court, Salem.

C.R.P.No.985 of 2015 is filed to set aside the fair and decretal order dated 01.09.2014 made in I.A.No.Nil of 2014 in I.A.No.230 of 2012 in O.S.No.280 of 2012 on the file of the II Additional Subordinate Court, Salem.

2.The parties and the issues involved in both the Civil Revision Petitions are one and the same and therefore, disposed of by this common order.

3.The petitioner is plaintiff and respondent is defendant in O.S.No.280 of 2012 on the file of the II Additional Subordinate Court, Salem. The petitioner filed the suit for declaration and for permanent injunction restraining the respondent from putting up any construction in the suit property. The petitioner filed I.A.No.230 of 2012 for appointment of an Advocate Commissioner. The Advocate Commissioner was appointed and he filed an interim

report on 24.07.2012. The respondent filed written statement on 16.08.2012 and is contesting the suit. The Advocate Commissioner filed the report with sketch on 24.11.2013 after inspecting the property and measuring the same with the help of Surveyor. The petitioner filed objection to the report of the Advocate Commissioner on 12.12.2013. The petitioner filed I.A.No.44 of 2013 under Order XXVI Rule 10(3) of C.P.C to scrap the report and plan No.2 filed by the Advocate Commissioner on 24.11.2013 and to appoint a new Advocate Commissioner to locate and fix the property with qualified Surveyor. According to the petitioner, the report of the Advocate Commissioner is not correct. The Advocate Commissioner has not properly noted down the suit property.

4.The respondent filed counter affidavit and opposed the said application stating that the petitioner without examining Advocate Commissioner who filed the report on 29.11.2013, has filed the above application to scrap the Commissioner's report on mere false averments and prayed for dismissal of the application.

5.The learned Judge considering the averments in the affidavit, counter affidavit, report of the Advocate Commissioner and evidence of the Advocate Commissioner and Surveyor, dismissed

the application on the ground that the petitioner has not given any material to Advocate Commissioner or Surveyor at the time of inspection and held that it is open to the petitioner to produce the documents if any to prove that Advocate Commissioner's report and sketch are not correct at the time of trial.

6.The petitioner filed I.A.No. Nil of 2014 for reissue of warrant of commission to the same Advocate Commissioner. The learned Judge returned the same as not maintainable in view of the order passed in I.A.No.44 of 2014 in I.A.No.230 of 2012 filed by the petitioner.

7.Against the said orders dated 17.07.2014 and 01.09.2014 made in I.A.No.44 of 2014 and I.A.No.Nil of 2014 respectively in I.A.No.230 of 2012 in O.S.No.280 of 2012, the petitioner has come out with the present two Civil Revision Petitions.

8.Heard the learned counsel for the petitioner as well as the learned Senior Counsel for the respondent and perused the materials available on record.

9.From the impugned order dated 17.07.2014, it is seen that

the Advocate Commissioner as well as the Surveyor have been examined. From their evidence, it is seen that the petitioner has not produced any document to the Advocate Commissioner and Surveyor at the time of inspection to substantiate his case to scrap the report. The learned Judge considering these aspects dismissed the application and made it clear that it is open to the petitioner to substantiate his claim by producing documents to scrap the report of the Advocate Commissioner's report. In view of the above facts, there is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 17.07.2014 and 01.09.2014 made in I.A.No.44 of 2014 and I.A.No.Nil of 2014 respectively in I.A.No.230 of 2012 in O.S.No.280 of 2012.

10.In the result, both the Civil Revision Petitions are dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

29.01.2018

Index :: yes/No

Speaking Order/Non-Speaking Order

gsa

V.M.VELUMANI,J.

gsa

To

The II Additional Subordinate Judge,
Salem.



C.R.P.(PD)Nos.984 & 985 of 2015
& M.P.No.1 of 2015

WEB COPY

29.01.2018