

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRP.(PD)No. 2953 of 2018

and

C.M.P.No.17285 of 2018

1.V.Ramasamy Gounder

2. R.Sankar

...Petitioners

Vs

1.P.Jagannathan

2.S.Pankajam

3.V.Malathi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreeted order passed in I.A.No.151 of 2018 in I.A.No.331 of 2014 in O.S.No. 132 of 2014 of the District Munsif cum Judicial Magistrate, Kodumudi, Erode District by allowing the Civil Revision Petition.

For Petitioner

: Mr.D.Balachandran

For Respondents

:No appearance

ORDER

The present application has been filed against the rejection of the prayer sought to scrap the earlier Advocate Commissioner's report and a direction to the Advocate Commissioner to conduct fresh investigation.

2. It is seen that earlier, the Advocate Commissioner had inspected the property and he had filed a report on 09.09.2016. Not being satisfied, the petitioner herein had raised an objection which was recorded by the trial Court. After the report the petitioner had taken out an application seeking for amendment in the plaint by introducing various other reliefs. The amendment sought for in the plaint was ordered and it was challenged by way of Civil Revision Petition in C.R.P.(PD).No.1947 of 2017 which came to be dismissed on 29.06.2017. As such, the amendment which was ordered has become final.

3.The grievance of the petitioner seems to be that the report of the Advocate Commissioner was not based on measurement taken by a qualified surveyor and therefore, sought for measurement by some qualified surveyor. I am unable to accept such a ground raised for the simple reason that aggrieved by the earlier commissioner's report, the petitioner had already submitted his objection which has also been recorded by the trial Court and such objection can be the point of consideration, when the trial Court takes up the suit for

final arguments. It cannot be said that just because an Advocate Commissioner's report has been filed, it is binding on the trial Court. The trial Court is at liberty to arrive at a just and fair conclusion based on the evidences before it and the observations made in the Advocate Commissioner's report, if required. Since the petitioners' grievance has already been met when he had raised an objection to the Commissioner's Report and the same has also been recorded by the trial Court, I do not find any reasons to interfere with the order passed by trial Court in I.A.No.151 of 2018 in O.S.No. 132 of 2014 dated 27.06.2018.

4. With the above observations, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

27.11.2018

Index: Yes/No
Internet: Yes/No
vsn/dh

To
The District Munisif cum Judicial Magistrate,
Kodumudi,
Erode District

M.S.RAMESH. J.,



CRP.(PD)No.2953 of 2018

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