

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)No.1188 of 2019

and

C.M.P.No.7613 of 2019

Subbaiya Gounder

... Petitioner

-VS-

Muruganandham

... Respondent

Prayer: Petitions under Article 227 of the Constitution of India praying to set aside the fair and final order dated 08.02.2019, passed in I.A.No.63 of 2019 in I.A.No.677 of 2013 in O.S.No.378 of 2009 on the file of District Munsif Court, Dharapuram.

For Petitioner : Mr. S. Saravanan

ORDER

WEB COPY

The above Civil Revision Petition is filed challenging the order passed by the learned District Munsif, Dharapuram in rejecting the petition filed by the defendant seeking re-issue the warrant to the Commissioner to revisit the suit property and measure the same based

on the old revenue documents which were in existence during the purchase by the respondent on 29.04.1981 with the assistance of the District Surveyor.

2. The suit has been filed by the respondent/plaintiffs for declaration that the suit first item of the property belongs to the second respondent/second plaintiff and that as the defendant has encroached into the portion of the suit second item of property, to order recovery of possession in favour of the second- plaintiff and that the defendant should not put up any kind of construction or alienate the second item of property.

3. Pending the suit, it appears that earlier an Advocate Commissioner had visited the suit property pursuant to order dated 29.08.2018 in I.A.No.677 of 2013 and measured the property with the assistance of the surveyor on the basis of the revenue records. The Commissioner had submitted his report with plan on 7.01.2019. Being not satisfied with that report, the present Petition has been filed.

4. The main contention of the defendant was that the Commissioner had not measured the property on the basis of the sale deed dated 29.04.1981 and on the basis of the old revenue records.

The said Petition was objected by the respondent/plaintiff stating that the measurement was done by the Commissioner with the assistance of the surveyor as per the orders of the Court. The learned District Munsif, Dharapuram, after going through the report filed by the Commissioner had found that the Commissioner had submitted his report with three plans, namely,

A) Plan 'A' which is drawn on the basis of the extent in the possession of the parties.

B) Plan 'B', drawn on the basis of the Title Deeds; and

C) Plan 'C' as per the re-survey records.

The learned Judge was of the opinion that since the detailed report along with plans also was on file, there was no necessity to have a reissue of warrant to the Advocate Commissioner and dismissed the said application. Challenging the same, the defendant is before this Court.

5. The learned counsel appearing for the revision petitioner would contend that the earlier Report has been prepared by the Commissioner only as per the Report of the surveyor's plan and not as per the survey records. The Advocate Commissioner who has been appointment in I.A.No.677 of 2013 has undertaken a very detailed survey and the plans which have been submitted by him would also

P.T. ASHA.J.,

mrn

prove the efforts taken by the Commissioner. The Commissioner has measured the property under three different heads and submitted his Report with plans. He has taken measurements on the basis of the possession of the properties and subsequently on the basis of the documents and title and thirdly on the basis of the present revenue records. I do not find any infirmity in the order of the learned Judge stating that the earlier report would be sufficient to decide the issue on hand. Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

28.03.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order

mrn

To
1. The District Munsif Court,
Dharapuram.

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