



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2019

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD) No.1380 of 2012

WEB COPY

Sevugaperumal

... Petitioner/Defendant/ Petitioner

-vs-

Mayavatharam

... Respondent/Plaintiff/Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.06.2012 passed in I.A.No.563/2011 in O.S.No.152/2010 on the file of the District Munsif Court, Periyakulam.

For Petitioner : Mr.S.Siva Thilakar

For Respondent : Mr.R.Subramanian

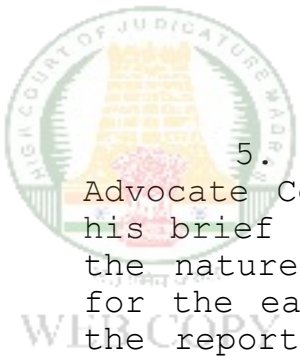
O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below dismissing the application filed by the petitioner to reissue the warrant to the Advocate Commissioner in order to inspect the property along with the help of Surveyor and to file a report along with the sketch.

2. The petitioner is the defendant in the suit. The respondent filed a suit against the petitioner seeking for the relief of permanent injunction. In the said suit, the petitioner filed an application for appointment of Advocate Commissioner. An Advocate Commissioner came to be appointed and he inspected the property and also filed a report on 30.11.2010. The petitioner had certain grievances regarding the report and therefore, he filed detailed objections before the Court below immediately.

3. The petitioner filed an application in I.A.No.563/2011 seeking for re-issuance of warrant to another Advocate Commissioner to inspect the property and to file a report. This application came to be filed only on the ground that the earlier inspection was not conducted properly and that the Advocate Commissioner exceeded his warrant and has given finding as if the suit property is a common pathway.

4. The Court below has dismissed the application on the ground that no case has been made out for appointment of another Advocate Commissioner without the earlier report being scrapped in the manner known to law.



5. The learned counsel for the petitioner submitted that the Advocate Commissioner, who was earlier appointed, had acted beyond his brief and had gone to the extent of giving a finding regarding the nature of property. Therefore, detailed objections were made for the earlier report. The learned counsel further submitted that the report was filed even without a proper sketch and the entire report was objected by immediately filing objections in writing. The learned counsel concluded his arguments by submitting that the findings given by the Advocate Commissioner will have a bearing in this case and therefore, it becomes necessary to appoint another Advocate Commissioner to conduct a fresh survey with the help of Surveyor and to file a report.

6. The learned counsel appearing on behalf of the respondent submitted that the respondent is the plaintiff in the suit and it is for the respondent to establish his right over the property and make out a case for permanent injunction. The Advocate Commissioner has filed a report and the appointment of Advocate Commissioner was done pursuant to the application filed by the petitioner/defendant. If at all there is any objection, it will be considered by the Court and without scrapping the earlier report, there is no question of another Advocate Commissioner being appointed in this case.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The respondent, who is the plaintiff in the suit, has filed the suit seeking for the relief of permanent injunction on the ground that the petitioner/defendant is attempting to encroach upon the pathway, which is the only access to the respondent/plaintiff. The petitioner had filed an application for appointment of Advocate Commissioner and an Advocate Commissioner came to be appointed and he has also filed a report. The petitioner has filed written objections for the said report.

9. The petitioner, after filing the objections to the Advocate Commissioner's report, filed one more application for re-issuance of warrant to another Commissioner to inspect the property and to file a report. The Court below has held that when there is already a report that is available, without scrapping the same, another Advocate Commissioner cannot be appointed. The reasoning given by the Court below is perfectly valid.

10. The petitioner has already filed his objections. If necessary, the Advocate Commissioner can also be put in the box and the petitioner will be entitled to cross-examine him on the finding given by him in the report. After all, the report of the Advocate Commissioner is only a piece of evidence in order to enable the Court to come to a just conclusion. The Court is not going to decide



Therefore, the Court will necessarily take into consideration the objections filed by the petitioner before coming to any conclusion. The Court is not bound by the finding of the Advocate Commissioner and the Court has to independently apply its mind on all the materials collected during the course of trial and come to a final conclusion. Therefore, the contention of the learned counsel for the petitioner that the report of the Commissioner will have a direct bearing in this case is only liable to be rejected. If on the earlier inspection, any Surveyor plan had been made ready, the Advocate Commissioner can also file the same before the Court in order to enable the parties as well as the Court to have a clear understanding regarding the Advocate Commissioner's report.

11. This Court does not find any illegality or infirmity in the order passed by the Court below and there are no grounds to interfere with the same.

12. In the result, the Civil Revision Petition is dismissed and the Court below is directed to complete the proceedings in O.S.No.153/2010 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif Court,
Periyakulam.

+1 CC to Mr.R.SUBRAMANIAN, Advocate (SR-94849[F] dated 30/10/2019)

C.R.P. (PD) (MD) No.1380 of 2012
25.10.2019

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