



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P.(MD)No.274 of 2012
and M.P.(MD)No.1 of 2012

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1.M.Kumaran

2.K.Pazhani Manickam

3.K.Ganapathy

: Petitioners

Vs.

S.Agilandeshwari

: Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.02.2011 made in I.A.No.870 of 2010 in O.S.No.17 of 2010 on the file of the Principal District Munsif Court, Pudukkottai and to allow the above Civil Revision Petition.

For Petitioner : Ms.Priyavadhana
for Mr.P.Thiagarajan
For Respondent : Mr.S.Deenadhayalan

ORDER

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below dismissing an application filed by the petitioners for re-issuance of the warrant to the Advocate Commissioner in order to inspect the property and measure the same with the help of a Surveyor.

2.The petitioners are defendants in the suit. The respondents filed suit against the petitioners claiming for the relief of permanent injunction. During the pendency of the suit, an application came to be filed for appointment of an Advocate Commissioner in order to note down the physical features and submit a report along with a sketch.

3.The Advocate Commissioner visited the property, on 03.02.2010 and he inspected and measured the same in the presence of the parties and their respective counsels. The Advocate Commissioner also filed a report before the Trial Court on 11.03.2010.

4.Thereafter, an application came to be filed for re-issuance of warrant to the same Advocate Commissioner to measure the property with the help of a Surveyor. The said application was allowed and the warrant was re-issued. Pursuant to the same, the Advocate Commissioner visited the property on 07.08.2010 along with the Surveyor and the Village Administrative Officer and parties were also present along with their respective counsels. One more report



along with sketch was filed before the trial Court by the Advocate Commissioner, on 05.10.2010.

5.The petitioners filed an application in I.A.No.870 of 2010 before the Court below seeking for re-issuance of the warrant to the same Advocate Commissioner in order to measure the property with the help of a Surveyor. This petition was filed mainly on the ground that the earlier reports filed by the Advocate Commissioner did not reflect the true state of affairs prevailing in the property and that the Advocate Commissioner did not take into consideration the objections raised by the petitioners. This application was strongly resisted by the respondents.

6.The Court below after considering the earlier reports filed by the Advocate Commissioner and after analyzing the reasons given by the petitioners for re-issuance of warrant to the Advocate Commissioner, came to a conclusion that there is absolutely no ground to re-issue the warrant to the Advocate Commissioner and there is absolutely no justification to undertake the said exercise. Aggrieved by the same, the present petition has been filed before this Court.

7.Ms.G.Priyavadhana, learned counsel appearing for the petitioners submitted that earlier reports filed by the Advocate Commissioner did not reflect the correct state of affairs of the property and the objections made by the petitioners were not considered by the Advocate Commissioner. The learned counsel further submitted that the Advocate Commissioner was biased and siding the respondent. The learned counsel further submitted that the warrant can be re-issued to an Advocate Commissioner at any stage of the proceedings to enable the Court to come to a fair conclusion in the case and the Court below was not right in dismissing the application filed by the petitioners.

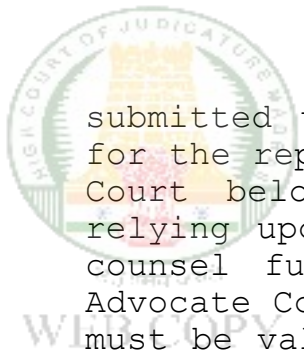
8.The learned counsel concluded her arguments by submitting that only a qualified Surveyor accompanying the Advocate Commissioner can give a clear picture regarding the existence of the wall, which is the subject matter of dispute in this case and that no prejudice will be caused to the respondent, if the same Advocate Commissioner re-visits the property and submits his report.

9.The learned counsel in order to substantiate her arguments, relied upon the following judgments:

a.**AIR 1996 MAD 347 Vemba Gounder Vs. Pooncholai.**

b.**2000 (III) CTC 78 Veppanathar alias Karuppannan and another Vs. Kaliappan.**

10.Per contra, the learned counsel appearing on behalf of the respondent submitted that the petitioners filed one application after another only to drag on the proceedings. The learned counsel



submitted that the petitioners have already filed their objections for the report of the Advocate Commissioner in the year 2012 and the Court below can take those objections into consideration while relying upon the report of the Advocate Commissioner. The learned counsel further submitted that the re-issuance of warrant to an Advocate Commissioner cannot be done as a matter of course and there must be valid reasons for re-issuance of warrant and merely because there are some objections for the petitioners on the earlier reports filed by the Advocate Commissioner, that is not a ground to re-issue the warrant and therefore, the Court below was perfectly right in dismissing the application.

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

12.The purpose of appointment of an Advocate Commissioner is only to enable the Court to appraise itself regarding the physical features of the property and in order to help the Court to come to a fair and just conclusion in the case. The report filed by the Advocate Commissioner shall be an evidence in the case and it shall form part of the records. If there are any objections to the report of the Advocate Commissioner, the Advocate Commissioner can be called as a witness and he can be questioned with regard to the matters touching upon the report filed by him.

13.It is, in fact, the duty of the Court to hear the objections, whenever an objection is made to the Commissioner's report and decide the same along with other materials that are available before the Court. The Code of Civil Procedure does not contemplate repeated issuance of Commissions, unless the Court finds that the first report is not satisfactory. Therefore, there must be valid reasons for the Court to re-issue the warrant to an Advocate Commissioner and the Court must given reasons for re-issuing such warrant.

14.In the present case, the Advocate Commissioner has visited the property twice and has filed his reports. In fact, during the second visit, he was assisted by the Surveyor as well as the Village Administrative Officer, who were present in the site along with revenue records. The only objections that were made by the petitioners in the affidavit filed in I.A.No.870 of 2010 is that the Advocate Commissioner has not taken into consideration the objections made by the petitioner and that both the reports do not reflect the correct state of affairs in the property. The reasons assigned in the affidavit, does not require a to re-visit to the property to conduct one more inspection.

15.Admittedly, the petitioners have filed their objections to the Advocate Commissioner's report in the year 2012. As stated above, the Advocate Commissioner will be called as a witness and he

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



the objections given by the petitioners. This will take care of the apprehensions raised by the petitioners. Ultimately, the Court below is not going to rely only upon the Advocate Commissioner's report and the same shall only form part of the evidence that is collected by the Court below during the course of trial.

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16.This Court dose not find any illegality or infirmity in the order passed by the Court below and the Court below has given valid reasons as to why the warrant cannot be re-issued to the Advocate Commissioner. This Court does not find any ground to interfere with the findings of the Court below. The objections raised by the petitioners can always be put to the Advocate Commissioner while he is examined as a witness before the Court below.

17.In the result, the fair and final order passed by the Court below in I.A.No.870 of 2010 in O.S.No.17 of 2010 is hereby confirmed and accordingly, this Civil Revision Petition is dismissed. There shall be a direction to the Principle District Munsif Court, Pudukkottai to complete the proceedings in O.S.No.17 of 2010, within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

To

The Principle District Munsif Court, Pudukkottai

+1 CC to Mr.P.THIAGARAJAN, Advocate (SR-86867[F] dated 16/09/2019)
+1 CC to Mr.D.RAMESHKUMAR, Advocate (SR-86791[F] dated 16/09/2019)

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