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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.02.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP (PD) (MD) No.121 of 2018

and

CMP. (MD) No.530 of 2018

Therasa Mary

.. Petitioner/Petitioner/Defendant

Vs.

Nepolean

.. Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decreetal Order dated 08.11.2017 in I.A.No.573 of 2017 in O.S.No.199 of 2013, on the file of the Principal District Munsif Court, Kumbakonam.

For Petitioner

: Mr.G.Prabhu Rajadurai

For Respondent

: Mr.G.Gomathisankar

ORDER

This Civil Revision Petition has been preferred by the petitioner , who is the defendant in the suit in O.S.No. 199 of 2013.

2. The learned counsel for the petitioner contended that there is an east -west compound wall, marking the petitioner and respondent property and an old fence made of thorns which also divide the property that is lying on the northern and southern side of the owner's property and both the petitioner and the respondent are having land on the southern as well as northern side of the said fence, whereas, this aspect was not noted by the Advocate Commissioner in his report and there is absolutely no amendment stated by the Commissioner. In spite of details to be noted down by the Commissioner, the Commissioner has failed to do the same and only frivolous amendment has been given by the Commissioner, without seeking the assistance of a qualified surveyor. Hence the petitioner contended that the report filed in I.A.No. 361 of 2013 has to be scrapped and the warrant has been re-issued to the same commissioner whereas the said petition was dismissed and the direction was also given by this Court and if at all if the revision petitioner is aggrieved by any omission or commission in the above commissioner's report, he can seek for re-issuance of warrant to make further investigation and hence the CMP No.3666 of 2017 was dismissed.

3. In view of the said direction and also regarding the details warrant were not noted by the commissioner report on instructions he has filed the present application for re-issuance



of warrant of the Commissioner report to note down the physical features. Recording these aspects to note down the physical features of the land of the petitioner and the respondent's property and also the old thorn fence which lies in a straight line which is in the northern- southern side of the said fence. The trial court after observing the details, i.e. Mentioned by the petitioner for issuance of commissioner warrant has given a finding that already in the report filed by the commissioner, the commissioner has clearly stated that S.No.59/42 and the suit boundaries with all measurements. Further the report of the Commissioner reveals that the plaintiff's land lying on the northern side of the plaintiff's land an encroachment at 0.80.0metre at the north-south and 10.4 metre at the East- West side there is encroachment and the said fact was ordered to be noted by the Commissioner this fact was not observed by the trial court. Since the petitioner herein has come forward for re-issuance of warrant to note down the same fact, which has also been noted down by the commissioner in the earlier report. Hence the facts already noted by the commissioner as per the instructions given by the petitioner.

4. There is no necessity to file another petition, that too, after three years and ten months of the petitioner report ie. 21.05.2017 stated by the petitioner for re-issuance of the warrant was dismissed and on perusal of the records, it is observed that earlier, the original commissioner was appointed in I.A.No.361 of 2013 and he filed a report, subsequently he had also filed his report along with plan and no other feature has been sought by the petitioner by way of re-issuance of warrant and the order of the trial court seems to be reasonable. When the very same parties filed application to appoint an Advocate Commissioner to note down the physical features of the same property, it is only to drag on the proceedings. Moreover, the second Petition filed only after three years and 10 months belatedly and hence this Court finds no merit in this Civil Revision Petition and the order of the trial Court is justifiable and the Civil Revision Petition fails.

5. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //



To
The Principal District Munsif, Kumbakonam.

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+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-49636[F] dated
26/02/2019)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-49871[F] dated
26/02/2019)

AAV

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