



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD) (PD) .No.396 of 2019

and

C.M.P (MD) .No.1970 of 2019

Maha :Petitioner/Petitioner/Plaintiff

Vs.

Isakkithevar (died)

1.Sudalaikannu

2.Iyyappan

3.Muthammal

4.Ramalakshmi

5.Shanmugasundari

:Respondents/Respondents/Defendants

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.485 of 2016 in O.S.No.195 of 2009 on the file of the Principal District Munsif Court, Nanguneri, dated 21.01.2019.

For Petitioner : Mr.K.R.Laxman

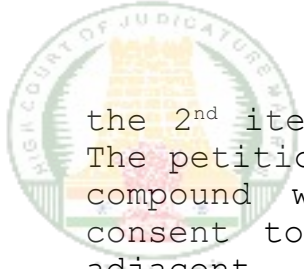
ORDER

The Civil Revision Petition has been preferred by the petitioner to set aside the order passed in I.A.No.485 of 2016 in O.S.No.195 of 2009 on the file of the Principal District Munsif Court, Nanguneri, dated 21.01.2019.

2.The petitioner herein has filed I.A.No.485 of 2016 to struck down the exhibits C1 and C2, an earlier advocate commissioner's report and to direct the advocate commissioner to note down the physical properties and file a fresh report with plan and measurement.

3.The respondents/defendants in the counter statement have contended that after giving sufficient adjournments, witnesses were examined and the case was posed for argument. Hence, the said interlocutory petition was filed by the petitioner only to drag on the case and there is no merit in the said petition.

4.The learned counsel for the petitioner would contend that



the 2nd item of the property lies at southern side of the 1st item. The petitioner/plaintiff has left 3 feet vacant area to maintain her compound wall. While so, the petitioner/plaintiff has given a consent to the respondents/defendants to raise the compound wall adjacent to the petitioner's compound wall, whereas the respondents/defendants have acted against the said arrangements and hence, the petitioner herein sought for the relief of declaration with regard to the 2nd item of the suit property which is vacant site to maintain her compound wall.

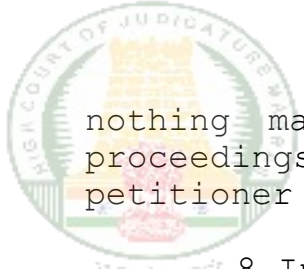
5. On perusal of oral and documentary evidence, the trial Court has given a finding that the suit was taken on file on 08.10.2009 and after examining the witnesses, the case was posted for argument on 07.04.2016. It is observed by the trial Court that on 07.04.2016 till 10.11.2016 when the case stands in the stage of arguments, the petitioner/plaintiff has not advanced any argument, whereas she filed the petition in I.A.No.485 of 2016. It is also observed that an earlier advocate commissioner was appointed and this petitioner/plaintiff has also filed an objection petition for the same. The said commissioner report was also marked during the time of trial as exhibits X1 and X2. It is seen that when there was an objection for the commissioner's report, there is no steps taken by the petitioner/plaintiff regarding the objection made in the report. Hence, the trial Court found that the petition was filed after a long period with a view to prolong the proceedings and dismissed the said petition.

6. On perusal of records, it is seen that in the said suit, already the advocate commissioner was appointed and after inspecting the suit properties, he filed a detailed report and the objection was also filed by the petitioner in the year 2010. Now the petition in I.A.No.485 of 2016 was filed to struck off the earlier report filed by the commissioner, in which, the petitioner has stated as follows"

" 2. Now the suit is at the stage of argument. While I studied the suit for arguments along with my advocate, I came to know that the report filed by the Advocate Commissioner is incomplete one. The Commissioner report and plan was marked through P.W.1 as Exhibits C1 and C2".

3. The Advocate Commissioner has not mentioned the measurement of the schedule property in any where in Ex.C1 and C2 and also he is not identified the schedule properties separately and note down the physical feature properly."

7. It is seen that the petition was filed in the year 2019 and the case was argued for a very long time back. Since the grievance regarding the earlier commissioner's report, the petitioner herein has filed the present I.A. to struck off the commissioner's report seems to be not a genuine one. If really the petitioner is aggrieved with the report of the Advocate Commissioner, immediately after filing objection, she would have sought to re-issue the warrant to note down anything that is required by the petitioner, whereas



nothing marked in the commissioner's report and now the trial proceedings is also over. Hence, the application filed by the petitioner does not reveal any merit.

8. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar

msa

To

The Principal District Munsif,
Nanguneri,

copy to;
The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai. 2 copies

1 CC to M/s.K.R.LAXMAN, Advocate (SR-49747[F] dated 26/02/2019)

**C.R.P. (MD) (PD) .No.396 of 2019
and
C.M.P (MD) .No.1970 of 2019**

Dated:-

26.02.2019

DS/ /SAR- (25.03.2019) 3P 5C