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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.02.2019

DELIVERED ON : 03.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) Nos.1607 and 1608 of 2015

Sketch @ Palanichamy

... Petitioner/Petitioner/Defendant
in both C.R.Ps.

Vs.

1.Azhagu Malai
2.Krishnasamy
3.Arumugam

... Respondents/Respondents/Plaintiffs
in both C.R.Ps.

Prayer in C.R.P. (MD) No.1607 of 2015: This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and executable order dated 04.07.2014 passed in I.A.No.362 of 2014 in O.S.No.152 of 2012 on the file of the learned District Munsif cum Judicial Magistrate No.I, Usilampatti.

Prayer in C.R.P. (MD) No.1608 of 2015: This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and executable order dated 18.11.2014 passed in I.A.No.558 of 2014 in I.A.No.361 of 2012 in O.S.No.152 of 2012 on the file of the learned District Munsif cum Judicial Magistrate No.I, Usilampatti.

For Petitioner (In both C.R.Ps.) : Mr.J.Barathan

For Respondents (in both C.R.Ps.) : Mr.M.Solaisamy

COMMON ORDER

Heard Mr.J.Barathan, learned counsel appearing for the petitioner and Mr.M.Solaisamy, learned counsel appearing for the respondents.

2.C.R.P. (MD) No.1607 of 2015 has been filed against the order passed in I.A.No.362 of 2014 in O.S.No.152 of 2012 dated 04.07.2014 on the file of the learned District Munsif cum Judicial Magistrate No.I, Usilampatti.



3.C.R.P.(MD)No.1608 of 2015 has been filed against the order passed in I.A.No.558 of 2014 in I.A.No.361 of 2012 in O.S.No.152 of 2012 dated 18.11.2014 on the file of the learned District Munsif cum Judicial Magistrate No.I, Usilampatti.

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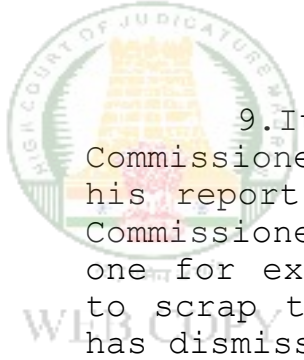
4.The petitioner herein is the defendant and the respondents herein are the plaintiffs in the suit. The respondents filed a suit in O.S.No.152 of 2012 seeking for a prayer of injunction. In that suit, the petitioner filed a petition in I.A.No.362 of 2014 for the examination of the Court Commissioner. That petition was dismissed by the trial Court and as against the dismissal order, the petitioner herein has filed C.R.P.(MD)No.1607 of 2015. The petitioner filed a petition in I.A.No.558 of 2014 to scrap the Commissioner report and to appoint another Commissioner and the petition was dismissed by the trial Court and against that order, the petitioner herein has come forward with the present petition in C.R.P.(MD)No.1608 of 2015.

5.On the side of the petitioner, it is stated that the respondents filed a petition in I.A.No.410 of 2012 to appoint a Commissioner and the Commissioner was appointed by the Court and the Commissioner filed his report and the petitioner has also filed objections to the Commissioner report and the petitioner has filed a petition in I.A.No.558 of 2014 to scrap the Commissioner report and another petition in I.A.No.362 of 2014 to examine the Commissioner as witness and both the petitions are dismissed.

6.On the side of the petitioner, it is further stated that a Commissioner can be examined, if a party is dissatisfied with the Commissioner's report under Order 26 Rule 10 of C.P.C., and the Court cannot dismiss the petition for scraping the Commissioner report before allowing the petitioner to examine the Commissioner. After the examination of the Court Commissioner, the Court can decide whether to scrap the Commissioner report or to order re-visit or to appointment of another Court Commissioner.

7.On the side of the respondents, it is stated that the Commissioner filed a report and he has measured the property from the eastwest road on the northern side of the petitioner's property and he has also taken measurement from the other side also. There is no ambiguity and there is no necessity to scrap the Commissioner report.

8.On the side of the petitioner, it is stated that a party can examine the Commissioner as a witness. The petitioner has already filed objections to the Commissioner report and it is necessary that the Commissioner to be examined and both the petitions can be decided simultaneously and the Court can come to the conclusion whether the Commissioner report is to be scraped only after the examination of the Commissioner.



9.It is seen that the trial Court has appointed a Commissioner in I.A.No.410 of 2012 and the Commissioner has filed his report. The petitioner herein has filed his objections to the Commissioner report. The petitioner herein has filed two petitions one for examination of the Court Commissioner and another petition to scrap the Commissioner report. It is seen that the trial Court has dismissed both the petitions simultaneously.

10.An opportunity to examine the Commissioner is to be given to any party aggrieved by the Commissioner report. Already the petitioner has objected to the Commissioner report. In the above circumstances, it is just a necessary that the petitioner is to be permitted to examine the Commissioner. Hence, the Civil Revision Petition in C.R.P.(MD)No.1607 of 2015 is allowed and the impugned order in I.A.No.362 of 2014 is set aside.

11.The trial Court can decide whether the Commissioner report is to be scraped or not only after the examination of the Commissioner. I.A.No.558 of 2014 is remitted back to the trial Court to be decided the issue after the examination of the Commissioner. C.R.P.(MD)No.1608 of 2015 is disposed of accordingly. No Costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif cum Judicial Magistrate No.I,
Usilampatti.

1 CC to M/s.T.R.JEYAPALAM, Advocate in SR-58826

C.R.P. (PD) (MD) Nos.1607 and 1608 of 2015
03.04.2019

mrn

PK/11.04.2019 : 3P/3C