



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P. (PD) (MD)No.1036 of 2014

1.U.Sarkaraia Jeyaprakash
2.Suronmani

... Petitioners

vs.

Ramesh

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.01.2014 made in I.A.No.357 of 2010 in O.S.No.89 of 2003 on the file of the District Munsif cum Judicial Magistrate Court, Kodaikanal.

For Petitioners : Mr.D.Rajkumar
For Respondent : Mr.H.Lakshmi Shankar

ORDER

This Civil Revision Petition is filed challenging the order passed by the trial Court in an application to review the earlier order with regard to the appointment of an Advocate Commissioner.

2.The facts that are necessary for the disposal of the Civil Revision Petition are stated briefly herein:-

The revision petitioners are the plaintiffs in the suit for permanent injunction in respect of an immovable property. An Advocate Commissioner was appointed in I.A.No.170 of 2003 and he submitted his report pursuant to the issuance of the warrant. After filing objections in respect of the said report, I.A.No.322 of 2003 was filed for the appointment of another Advocate Commissioner by the respondent herein and the said application was opposed by the revision petitioners by filing their counter. However, in the said counter, the revision petitioners agreed to the appointment of the same Advocate Commissioner, who had submitted the earlier report, by reissue of the warrant. Eventually, the trial Court recorded that the revision petitioners had stated that the physical features of the property had not changed and that if another Commissioner is appointed, no prejudice would be caused to the respondent. On that basis, another Advocate Commissioner was appointed. The said order appointing the Advocate



Commissioner was sought to be reviewed by filing I.A.No.357 of 2010 and the said review application was rejected by the impugned order, dated 08.01.2014, on the basis that no grounds were made out for review by way of new oral and documentary evidence. The said order in review is challenged in the Civil Revision Petition.

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3.I heard the learned counsel for the revision petitioners and the learned counsel for the respondent.

4.The learned counsel for the revision petitioners submitted that there is a case for review of the impugned order inasmuch as the earlier report of the Advocate Commissioner in I.A.No.170 of 2003 had not been scrapped and that without doing so, the new Commissioner ought not to have been appointed. He relied upon the judgments of this Court in **R.Sivasubramanian Vs. S.Balamurugan** reported in **2006 (2) CTC 54** and **Ganesan Vs. Vijayalakshmi** reported in **2019(1)CTC 269** for the purpose of contending that the second Advocate Commissioner should be appointed, only if the Court has reason to be dissatisfied with the proceedings and report of the first Commissioner. On this basis, he concluded the submissions by submitting that there is an error apparent on the face of the record and that, therefore, the order in the review application is liable to be set aside.

5.In response, the learned counsel for the respondent submitted that it is an un-disputed fact that the revision petitioners consented to the appointment of the Advocate Commissioner and did not contend that such appointment cannot be made without scrapping the report of the first Advocate Commissioner. Therefore, the learned counsel contended that the stand of the revision petitioners in I.A.No.322 of 2003 cannot be changed while conducting the review application or the Civil Revision Petition arising therefrom. Accordingly, it was submitted that there is no error apparent on the face of the record and, therefore, the review application was correctly dismissed by the trial Court.

6.The pleadings, impugned order and oral submissions were carefully considered.

7.In this case, it is the admitted position that the revision petitioners' consented to the appointment of an Advocate Commissioner in response to I.A.No.322 of 2003. It is also clear from the counter that the stand that the Advocate Commissioner cannot be appointed without scrapping the earlier report was not taken. Consequently, it cannot be said that there is an error apparent on the face of the record because the trial Court did not consider the said aspect while deciding I.A.No.322 of 2003. The judgments that relied upon by the revision petitioners are to the effect that the earlier report of the Advocate Commissioner should



not be rejected without recording proper reason for the same. In this case, the earlier report was not rejected. Therefore, the said judgments are distinguishable on the facts.

8. In the result, I am of the view that there is no error apparent in the order passed in I.A.No.322 of 2003 and therefore, the impugned order in I.A.No.357 of 2010 in O.S.No.89 of 2003 is not liable to be interfered with in the exercise of revisional jurisdiction. It is also submitted that the suit is at the stage of trial. Consequently, the revision petition is liable to be dismissed. In fine, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Ls
To

1. The District Munsif cum Judicial Magistrate Court,
Kodaikanal.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.H.LAKSHMI SHANKAR, Advocate Sr. No.79606
+1CC TO MR.D.RAJ KUMAR, Advocate Sr. No. 79837

Order made in
C.R.P. (PD) (MD) No.1036 of 2014
02.08.2019

KG(CO)
TR (30.08.2019) 3P 6C