



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 13.09.2019

DELIVERED ON : 28.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD)No.2430 of 2014

and

C.M.P. (MD)No.7627 of 2018

Sankarapandian

.. Petitioner/Petitioner/
Plaintiff

Vs.

Alexander

.. Respondent/Respondent/
Defendant

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to scrap the Commissioner's Report and plan filed in I.A.No.27 of 2011 in O.S.No.343 of 2010 dated 13.02.2014 on the file of District Munsif Court, Pudukottai and to appoint a fresh Advocate Commissioner or in the alternative to re-issue warrant of commission to the same Commissioner to measure the suit property in terms of the documents in respective parties and the objection filed by the petitioner.

For Petitioner : Mr.N.Balakrishnan
For Respondent : M/s.Porkodi Karnan

ORDER

Heard the learned counsel on either side.

2. This petition has been filed to set aside the order passed in I.A.No.27 of 2011 in O.S.No.343 of 2010 dated 13.02.2014 on the file of District Munsif Court, Pudukottai.

3. The petitioner is the plaintiff and the respondent is the defendant in the suit.

4. The petitioner filed a suit in O.S.No.343 of 2010 for a prayer of permanent injunction and the defendant filed an Interlocutory Application in I.A.No.27 of 2011 for appointment of an Advocate Commissioner and the same was allowed by the Trial Court. The Advocate Commissioner has filed his report. The petitioner filed a petition in I.A.No.1028 of 2013 for scarping the report of the commissioner dated 26.08.2013 and for appointing another Commissioner to inspect the suit property and to fix the northern



and southern boundary with the help of a qualified Surveyor. That petition was dismissed by the Trial Court. Against which, the petitioner preferred this appeal.

5. Brief substance of the petition in I.A.No.1028 of 2013 is as follows:-

The Advocate Commissioner inspected the suit property on 14.10.2012. But he has not chosen to file a report. He again visited the suit property on 28.07.2013. At the time of visit, the Commissioner had insisted the surveyor to draw a sketch contrary to the entries in the Survey Register. But, the Surveyor refused to give a wrong sketch. Thereafter, the commissioner produced a false report with an incorrect sketch before the Court below. The Commissioner had acted in a biased manner by submitting a false report with an incorrect sketch and the report submitted by the Commissioner is objected and it is to be scraped.

6. The substance of the counter filed by the respondent is as follows:-

It is wrongly stated that the Commissioner had insisted the Surveyor to draw a sketch contrary to the measurements and the revenue records. The Commissioner has not acted in a biased manner. There is no necessity to scrap the report and sketch produced by the Commissioner.

7. On the side of the petitioner it is stated that the commissioner has inspected and measured the suit property on 14.10.2012 and he submitted a memo on 01.11.2012 and that in the report it is stated that the western boundary of the suit property could not be measured due to the growth of Karuvelam Trees. Again, the commissioner inspected and measured the suit property on 28.07.2013 and filed his report on 14.08.2013 with measurements. Hence, there is a shadow upon the Commissioner report and the same has to be scrapped. A Judgment of this Court in the case of **R.Malligeswari Vs.V.Munuswamy** reported in **2015 (2) MWN (Civil) 358** is cited. The relevant portion of the above Judgement is as follows:-

" Under order 26 Rule 10 (3), the Trial Court has got discretion to Order a fresh commission or not. However, the Court is not bound to do so in every case where the result of the local investigation is found to be unsatisfactory. Trial Court can decide the case on the evidence. But, where the Trial Court is dissatisfied with the whole proceedings of the Commissioner that it thinks it better to discard the whole record and start afresh, it may do so. Where the Court is of opinion, on considering the objection of the parties, if any that the Commissioner has so misconceived his duties as to render his Report valueless, it may wipe out and



supersedes the First Report by a specific Order to that effect, and may issue a fresh commission."

8. It is seen that the Commissioner, inspected the suit property on 14.10.2012 and filed a memo on 14.10.2012. Stating that he could not measure the western boundary of the suit property since there were Karuvelam Trees. Again the Commissioner gave notice to the parties on 23.03.2013 to take steps to cut the Karuvelam Trees to facilitate measurement. On the directions of the Court dated 13.07.2014, the Commissioner measured the suit property on 28.07.2013 in the presence of the petitioner and he filed a report on 14.08.2013. Therefore, the delay in filing the Commissioner report was clearly explained. If the Commissioner insisted the surveyor to give a false sketch against the revenue records the same can be verified by comparing with the revenue records. Hence, there is nothing sufficient enough to interfere with the orders passed by the Trial Court. In the course of the trial, if the Trial Court found that there is some discrepancies in the Commissioner's report, then the trial Court is at liberty to appoint a new Commissioner or to direct to revisit by the existing commissioner to inspect the suit property.

9. With the above observations, the order passed by the Trial Court in I.A.No.27 of 2011 in O.S.No.343 of 2010 dated 13.02.2014 on the file of District Munsif Court, Pudukottai, is confirmed. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

The District Munsif Court, Pudukottai.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-102259[F] dated 28/11/2019)

+1 CC to M/s.N.BALAKRISHNAN, Advocate (SR-103004[F] dated 02/12/2019)

Pre-delivery order made in
C.R.P. (NPD) (MD) No.2430 of 2014 and
C.M.P. (MD) No.7627 of 2018

28.11.2019