



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

C.R.P (MD)No.1965 of 2019
and
CMP (MD) .No. 10108 of 2019

P. Ganesamoorthy ... Petitioner / Petitioner

Vs.

P. Subramanian ... Respondent / Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order passed in I.A.No. 1 of 2019 in I.A.No. 368 of 2015 in O.S.No. 114 of 2015 dated 16.08.2019 on the file of the Principal District Munsif Court, Tenkasi.

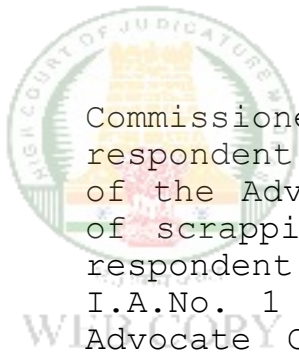
For Petitioner : Mr. H. Arumugam

For respondent : Mr. D. Sreenivasa Raghavan

ORDER

This Civil Revision Petition has been filed against the order dated 16.08.2019 made in I.A.No. 1 of 2019 in I.A.No. 368 of 2015 in O.S.No. 114 of 2015 on the file of the Principal District Munsif Court, Tenkasi, which was filed by the respondent herein, for re-issue of warrant to the Advocate Commissioner.

2. The revision petitioner, who is the plaintiff in the suit in O.S.No. 114 of 2015, has contended that originally he has filed an application in I.A.No.368 of 2015 for appointment of Advocate Commissioner and the same was allowed and the Advocate



Commissioner has also filed his report before the Court below. The respondent herein has not filed any objection questioning the report of the Advocate Commissioner. However, without seeking the relief of scrapping the earlier report of the Advocate Commissioner, the respondent herein filed the above Interlocutory Application in I.A.No. 1 of 2019 for the purpose of re-issue of warrant to the Advocate Commissioner to measure the property with the help of Surveyor. According to the revision petitioner, the Court below, without scrapping the earlier report of the Advocate Commissioner, allowed the application in I.A.No. 1 of 2019 for re-issue of warrant to the Advocate Commissioner to measure the property along with the Surveyor and the same is totally un-warranted and hence, the impugned order is liable to be set aside.

3. The learned counsel appearing for the revision petitioner would contend that the earlier Interlocutory Application in I.A.No. 368 of 2015 was filed by the revision petitioner herein for the purpose of appointment of Advocate Commissioner and the same was allowed. Though the Advocate Commissioner has filed a report before the Court below, he has not taken any assistance from the Surveyor to measure the property. However, the respondent has not made any objection to the report of the Advocate Commissioner. Hence, the Court below ought not to have allowed the application as prayed for. He would further submit that in I.A.No. 1 of 2019, before the Court below, the respondent herein has only impleaded the revision petitioner / 3rd defendant as party respondent leaving the other defendants. The defendants 1 and 2 in the suit are necessary party to the proceedings as per Rule 29 of Civil Rules of Practice. In support of his contention he has relied on the order of this Court dated 24.09.2019 made in **CRP(PD) (MD).No. 191 of 2017 in the case of Sathik Batcha Vs. Arif Raja and others**, wherein at paragraph No.8 it has been held as follows:

"8. In terms of Rule 29 of Civil Rules of Practice, it is mandatory for the parties to the suit that if any party files any application, it is mandatory to implead all the parties to the suit in the said application. Such mandatory requirement is not followed in the present case. Further, the revision petitioner is not a formal party to the said application and any order passed in the said application, it would affect the interest of the revision petitioner. Such being the case, the first respondent / plaintiff's failure to implead the petitioner / first defendant which according to this Court is a deliberate one and further, the Court below failed to consider all these aspects and granted the interim order in a mechanical manner without hearing the petitioner."



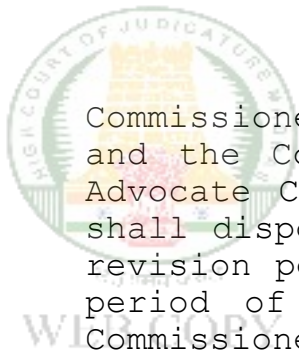
4. Per contra, the learned counsel appearing for the respondent / third defendant would submit that, the other two defendants have been set ex parte in the main suit itself and hence, they are not necessary party to the proceedings. Therefore, he has not impleaded the other respondents in the proceedings. He would further submit that the Court below has passed an order after considering all the facts of the case and hence, prayed for dismissal of this Civil Revision Petition.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. In the present case, originally the application in I.A.No. 368 of 2015 was filed by the revision petitioner / plaintiff for appointment of an Advocate Commissioner and the same was allowed and the Advocate Commissioner has also filed a report before the Court below. The said report has not been objected by any of the parties. It is also an admitted fact that the other two defendants i.e., the defendants 1 and 2 were set ex parte in the suit itself. According to the revision petitioner, he is in possession and enjoyment of the property. According to the respondent, he is in possession of the property. It is an admitted fact that the dispute is now only between the revision petitioner and the respondent. This Court is of the view that the non-impleadment of the defendants 1 and 2 need not be serious note of, because, it is only an interim application for appointment of Advocate Commissioner. Hence, I do not find any reason to interfere with the order passed by the Court below.

7. With regard to the re-issue of warrant to the Advocate Commissioner, admittedly both the parties have not objection with regard to the earlier report. However, in the previous report, they have not taken the aid of the Surveyor to measure the property. Therefore, there is nothing wrong in issuing the warrant to the same Advocate Commissioner to measure the property with the help of the Surveyor. The Court below has held that the report would be only in continuation of the earlier report. This Court does not find any reason to interfere with the order passed by the Court below. There is no merit in the Civil Revision Petition. Hence, the the same is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed.

8. The Advocate Commissioner is directed to file a report within a period three weeks from the date of receipt of a copy of the report filed by the Advocate Commissioner. If the parties have filed any objection to the Advocate



Commissioner's report, the same may be accepted by the Court below and the Court below may permit the parties to cross examine the Advocate Commissioner and after cross examination, the Court below shall dispose of the objections if any, filed by the parties. The revision petitioners shall file their objections, if any, within a period of three weeks from the date of filing of the Advocate Commissioner's additional report. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Principal District Munsif Court,
Tenkasi.

+1 CC to M/s.D. SRINIVASARAGAVAN, Advocate (SR-100209[F] dated 21/11/2019)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-100768[F] dated 22/11/2019)

C.R.P(MD)No.1965 of 2019 and
CMP(MD).No. 10108 of 2019

21.11.2019

trp

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