



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE K. RAVICHANDRABAABU

C.R.P. (PD) (MD) No. 1638 of 2013

and

M.P (MD) No. 1 of 2013

Ilanko Pandian

..Petitioner/petitioner / defendant

-vs-

Poolammal

.. Respondent/Respondent/ plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 03.07.2013 made in I.A.No.1944 of 2012 in O.S.No.685 of 2009 on the file of the Principal District Munsif, Tirunelveli.

For Petitioner : Mr.S.Sivathilakar
For Respondent : Mr.K.Gurunathan

ORDER

This civil revision petition is filed by the defendant in a suit for bare injunction. He is aggrieved against the order of the trial Court in rejecting his application for re-issuance of the commission warrant to measure his property, based on the Sumangali Nagar Extension lay out.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3.The respondent herein, as the plaintiff, filed a suit for bare injunction in O.S.No.685 of 2009 on the file of the District Munsif Court, Tirunelveli, restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property. Pending suit, the plaintiff filed an application for appointment of Advocate Commissioner to measure the schedule property belonging to the plaintiff and the defendant. The trial Court appointed the Commissioner, who intturn, though filed a report after measuring the property of the plaintiff, was not in a position to measure the property of the defendant on the reason that the defendant has not presented the Sumangali Nagar Extension lay out plan at the time of inspection. Therefore, the Advocate Commissioner filed a report and returned warrant by stating that he was not in a position to measure the property belonging to the defendant. Now, the defendant filed an application for re-issuance of the warrant by stating that he will produce the Sumangali Nagar Extension lay out plan to the Commissioner, so as to enable to measure his property as well. The trial Court rejected the



application only on the reason that without scraping the earlier report filed by the Advocate Commissioner, reissuing the warrant does not arise.

4. In this case, it is seen that the revision petitioner only seeks for re-issuance of warrant to measure his property, which is admittedly, not measured by the Advocate Commissioner at the time of original inspection. Therefore, this Court finds that no prejudice would be caused by reissuing the warrant, as the original prayer sought for by the petitioner in the commissioner application itself is to measure the plaintiff's and the defendant's property. Therefore, this Court is of the view that the reasoning given by the Court below in refusing to reissue warrant cannot be sustained. Accordingly, this Civil Revision Petition is allowed on the following terms:-

(a) the trial Court shall reissue the warrant to the Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order.

(b) the Commissioner shall inspect the subject matter property and measure the defendant's property alone and file supplementary report in addition to the report already filed by him.

(c) the defendant shall place the Sumangali Nagar Extension lay out plan to the Advocate Commissioner at the time of inspection without fail.

(d) the Advocate Commissioner shall file the supplementary report within a period of two weeks from the issuance of warrant.

(e) the trial Court will fix the necessary remuneration to the Advocate Commissioner as deemed fit and the said remuneration shall be paid by the defendant.

(f) the Advocate Commissioner shall take assistance of the Taluk Surveyor as well while measuring the property.

(g) after filing the supplementary report by the Advocate Commissioner, the trial Court will take up the main suit and dispose of the same on merits in accordance with law, within a period of eight weeks thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //



To

The Principal District Munsif, Tirunelveli.

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-71260[F] dated 25/06/2019)

+1 CC to M/s.K.GURUNATHAN, Advocate(SR-71540[F] dated 26/06/2019)

SKN

C.R.P. (PD) (MD) No.1638 of 2013
and
M.P (MD) No. 1 of 2013
25.06.2019

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