

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 645 of 2018
in
C.M.P.No. 3334 of 2018

P.Sivagami

..Petitioner

Vs.

1.Ravichandran
2.Palaniammal

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 24.07.2017 passed by the learned Principal District Munsif, Salem in I.A.No. 566 of 2017 in I.A.No. 89 of 2016 in O.S.NO. 687 of 2015.

For Petitioner : Mr.N.Srinivasan for Mr.L.Mouli

For Respondents : No Appearance

O R D E R

The plaintiff in O.S.No. 687 of 2015, aggrieved by an order passed in I.A.No. 566 of 2017 has come up with this Civil Revision Petition.

2. The suit in O.S.No. 687 of 2015 has been filed by the petitioner seeking permanent injunction restraining the defendants from damaging or demolishing the suit property, which is a common wall, and for costs.

3. Pending suit, a Commissioner was appointed to measure the property along with a Surveyor and he also filed a report on 09.06.2016. The petitioner has also filed her objections to the said report on 24.06.2016. Soon after the filing of the objections, the petitioner has filed the present application seeking reissue of the warrant of commission alleging that the Surveyor was influenced by a Councilor of the Salem Municipal

Corporation and he has not taken proper measurements. This application was resisted contending that the warrant cannot be reissued to the same Commissioner or a second Commissioner cannot be appointed unless it is shown that the report of the Commissioner already filed is liable to be scrapped.

4. The learned District Munsif who heard the application upon consideration of the law relating to appointment of second Commissioner and reissue of warrants concluded that unless it is shown that the report is erroneous and is liable to be scrapped, the warrant cannot be re-issued or a second Commissioner cannot be appointed. Therefore, the learned District Munsif concluded that the petition seeking reissuance of warrant cannot be allowed at this stage. On the said conclusion, the Trial Judge dismissed the application. The learned trial Judge had in fact preserved the right of the petitioner to demonstrate that the report of the commissioner is wrong and is liable to be scrapped and also seek re-issue of warrant or appointment of another Commissioner, after demonstrating that the report is incorrect. Aggrieved, the petitioner has come up with this civil revision petition.

5. Heard Mr. N.Srinivasan for Mr.L.Mouli for the petitioner.

6. The law relating to appointment of a second commissioner or re-issue of warrant to the same commissioner to revisit or remeasure the suit property is well settled. It can be done nly when the court reaches a conclusion that the report that is on record has to be scrapped for good and valid reasons. The Trial Court has not foreclosed the rights of the petitioner, it has only said that the application is not maintainable at this stage. It has in fact preserved the right of the petitioner to establish that the report of the Commissioner is wrong and demonstrate that the report has to be scrapped. I do not see any reason to interfere with the order of the Trial Court at this stage. Therefore, this Civil Revision Petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

7. The right of the petitioner to demonstrate that the Commissioner's report is wrong and reissue the warrant is preserved.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:-

The Principal District Munsif,
Salem.

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C.M.P.No. 3334 of 2018

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