

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

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THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD)No.1740 of 2017

and

C.M.P.No.8223 of 2017

S.Satchithanantham

... Petitioner / Plaintiff

Vs.

1. S.Arumugam

2. A.Siva @ Sivanantham

... Respondents / Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 01.02.2017 passed in I.A.No.1 of 2017 in I.A.No.260 of 2012 in O.S.No.114 of 2012 on the file of the Additional District Munsif, Chidambaram.

For Petitioner : M/s. V.Meharunnisha for

M/s.G.Sumitra

For Respondents : Mr.K.Jayaraman

ORDER

This Civil Revision Petition has been filed by the petitioner / plaintiff against the dismissal of his interlocutory application in I.A.No.1 of 2017 in I.A.No.260 of 2012 in O.S.No.114 of 2012 vide order dated 01.02.2017 passed by the learned Additional District Munsif, Chidambaram.

2.The brief facts of the case are as follows:

The petitioner herein had filed a suit in O.S.No.114 of 2012 before the learned Additional District Munsif, Chidambaram, for permanent injunction restraining the respondents / defendants from interfering with his peaceful possession and enjoyment of the suit schedule property. Pending the said suit, he had filed an application in I.A.No.260 of 2012 to appoint an Advocate Commissioner to inspect the suit properties with the help of a qualified Surveyor and note down the physical features of the suit schedule property. The trial Court had allowed the said application and appointed an Advocate Commissioner. Pursuant to the said order, the learned Advocate Commissioner inspected the suit schedule property and filed an interim report with plan on 07.08.2012. Thereafter, the plaintiff had filed another application in I.A.No.1 of 2017 in I.A.No.260 of 2012 in O.S.No.114 of 2012 to reissue the warrant of Commission to the same Advocate Commissioner to file a final report, after inspecting the suit schedule property with the help of a qualified Surveyor. However, the said application was dismissed, by order dated 01.02.2017, which is impugned herein.

3. M/s.V.Meharunnisha, representing M/s.G.Sumitra, learned counsel on record for the petitioner/plaintiff, submitted that on the previous occasion, in I.A.No.260 of 2012 in O.S.No.114 of 2012, the trial Court had appointed an Advocate Commissioner to inspect the suit schedule property and file a report along with plan; accordingly, the said Advocate Commissioner had inspected the suit schedule property and filed an interim report dated 07.08.2012 stating that the suit schedule property could not be surveyed, as there was no direction in the Commission warrant to measure the property with the help of a Surveyor. Further, bushes and shrubs grown therein and they have to be removed and then only property can be measured and hence, the petitioner herein requested the trial Court to pass an order directing the Commissioner to measure the suit schedule property with the help of a qualified Surveyor, but the trial Court had rejected the said request and closed the application and hence the petitioner had filed another application in I.A.No.1 of 2017 praying to reissue the warrant of commission to the same Advocate Commissioner, to measure the suit property with the help of a qualified Surveyor and file a report with plan, but without considering the nature of the relief sought by the petitioner, the trial Court had erroneously

dismissed the said application. Stating so, the learned counsel prayed to allow this Civil Revision Petition by setting aside the order impugned herein.

4. Mr.K.Jayaraman, learned counsel appearing for the respondents fairly conceded that the Advocate Commissioner, who was appointed in I.A.No.260 of 2012, had filed only an interim report on 07.08.2012 and hence, the learned counsel prayed to pass an appropriate order in this Civil Revision Petition.

5. Heard both sides and perused the materials placed before this Court.

6. Admittedly, the suit has been filed by the petitioner/plaintiff for permanent injunction restraining the respondents/defendants from interfering with his peaceful possession and enjoyment of the schedule mentioned property. During pendency of the said suit, the trial Court had appointed an Advocate Commissioner to inspect the suit schedule property and file a detailed report along with plan. Accordingly, the Advocate Commissioner inspected the property and filed an interim

report dated 07.08.2012. In the said report, it is stated that there are bushes and shrubs in the suit schedule property and the same have to be removed. He also stated that he did not measure the property for want of direction from the trial Court for availing the assistance of the Surveyor, but without considering the same, the trial Court has closed the application. Hence the petitioner had filed another application in IA.No.1 of 2017 in IA.No.260 of 2012 in OS.No.114 of 2012 requesting the Court to reissue Commission warrant to measure the suit property with the help of a qualified Surveyor and file his report with plan, but the trial Court had dismissed the said application also.

7. This Court is of the view that the order passed by the trial Court, dismissing the application seeking to reissue the warrant of Commission to the very same Advocate Commissioner, is error apparent on the face of the record. When the learned Advocate Commissioner was appointed for the purpose of measuring the suit schedule property and note down the physical features of the same, the trial Court should have issued a direction to avail the assistance of the Surveyor. Whereas, in the present case, no such direction was issued to the Commissioner to avail the assistance of the Surveyor. When the same was brought to the notice of

the trial Court by the learned Advocate Commissioner and the petitioner by filing another application, the trial Court has failed to consider the same in a proper perspective and dismissed the said application by the impugned order, which is arbitrary and illegal. Further, taking note of the fact that the report of the Advocate Commissioner is helpful to the trial Court as a guiding factor in the process of decision making and also considering the submission of the learned counsel for the respondents that he has no objection to reissue the warrant of commission to the learned Advocate Commissioner, for the purpose of measuring the suit schedule property and note down the physical features of the same, this Court is inclined to set aside the impugned order passed by the trial Court.

8. Accordingly, this Civil Revision Petition is allowed, by setting aside the order dated 01.02.2017 passed by the learned Additional District Munsif, Chidambaram in I.A.No.1 of 2017 in I.A.No.260 of 2012 in O.S.No.114 of 2012. The trial Court is directed to reissue the warrant to the same Advocate Commissioner to complete the work assigned to him in the original warrant and measure the suit schedule property with the help of a qualified Surveyor and Village Administrative

Officer by referring to the Revenue records and file a final report with plan. Further, considering the fact that the suit is filed in the year 2012, the learned Additional District Munsif, Chidambaram, is directed to issue the commission warrant without any delay and direct the Commissioner to file report by fixing short date and dispose of the suit in O.S.No.114 of 2012 as expeditiously as possible, in any event not later than six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

04.11.2020

Index:Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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To

The Additional District Munsif,
Chidambaram.

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P.RAJAMANICKAM, J.

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