



WEB COPY

C.R.P.(MD)No.1640 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 16.03.2020

Delivered On : 22.05.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)No.1640 of 2013

and

C.M.P. (MD)No.1 of 2013

Illanko Pandian

... Petitioner / Defendant

Vs.

Chelliah

... Respondent / Plaintiff

Prayer: This Civil revision petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 03.07.2013 made in I.A.No.2144 of 2011 in O.S.No.683 of 2009 on the file of the District Munsif Court, Tirunelveli.

For Petitioner : Mr.Sivathilakar

For Respondent : Mr.S.B.Kamalanathan

ORDER

With the consent of both sides counsels, this order is pronounced in the open Court through Video Conference system on 22.05.2020.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.2144 of 2011 in O.S.No.683 of 2009 dated 03.07.2013, on the file of the District Munsif Court, Tirunelveli.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has been filed a suit in O.S.No.683 of 2009 on the file of the learned Principal District Munsif, Tirunelveli for a prayer of bare injunction. The defendant has filed a petition in I.A.No.2144 of 2011 for re-issuing the Commissioner warrant to measure the suit schedule property based on Sumangali Nagar Extension lay out with the help of a Surveyor. This petition was dismissed by the trial Court. Against which, the petitioner has come forward with this petition.

<https://hcservices.ecourts.gov.in/hcservices/>



4. Brief substance of the petition in I.A.No.2144 of 2011 is as follows:

The petitioner herein has filed objections to the Commissioner report. The petitioner has purchased plot no.7 of Sumangali nagar Extension. At the time of inspection by the Advocate Commissioner, the respondent herein objected measuring plot no.7 based on the lay out plan of Sumangali Nagar extension on the ground that there is no specific direction to that effect from the trial court. The respondent herein attempted to falsely identify a lay out, which is not at all in existence at any point of time. Roads have been laid as per Sumangali Nagar Extension lay out and the roads are still in existence. There were many electric poles in the said street. Unless the Commission warrant is re-issued, the petitioner herein will be put into irreparable loss and hardship.

5. Brief substance of the counter in I.A.No.2144 of 2011 is as follows:

The petitioner already filed objections to the Commissioner application. But the Commissioner petition was allowed on merits. In the objection filed by the petitioner, he has not raised any points to measure the property. The petitioner has not prayed for scrapping the earlier Commissioner report. Without scraping the earlier Commissioner report, a fresh Commissioner warrant cannot be issued.

6. After considering both sides, the trial Court dismissed the petition. Against which, the petitioner preferred this revision petition on the following grounds:

The Commissioner report was defective. The objections of the petitioner has to be considered. Even without scraping the earlier report, the application filed by the petitioner can be allowed. When there is a dispute regarding the identity of the property, re-issuance of the warrant is necessary. Engaging the same Commissioner will not cause prejudice to the parties, it will be helpful for the Court to arrive at a correct conclusion.

7. On the side of the petitioner, it is stated that the suit was filed only for bare injunction wherein identity of the property is the main question involved. The Commissioner report was filed on 30.08.2011 and the petitioner herein has filed objections on September 2011 and the revision petitioner has filed a petition for the re-visit of the property by the same Commissioner. On two grounds, the trial Court has dismissed the petition. One is that the earlier report was not scraped and the second one is that the petitioner failed to furnish the necessary details at the time of earlier visit of the Commissioner, the petitioner prays the order to be set aside and that a warrant to be issued to the Commissioner to re-visit the suit property.

8. The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **Semitta Kounder and**



another v. Murugesan reported in **2016 (6) CTC 66**, wherein it is stated as follows:

"However, in the instant case on hand, the claim of the petitioners for re-issue of Commissioner's warrant appears to be bona fide since it is only in regard to the proper identification and measurement of the suit property as both the petitioners and respondent happened to be the neighbours and claiming rights over a portion of the property. In the absence of proper measurement and identification of the suit property, the trial Court may not be able to resolve the issue and give a quietus to the dispute between the parties. Mere opportunity to raise objections and cross-examine the Advocate Commissioner on his report, in the circumstances of the case, will be of no assistance to the trial Judge for resolving the issue. Further, no prejudice would be caused to either side if the same Advocate Commissioner is directed to properly measure and identify the physical features of the property with the active assistance of the Surveyor and if proper report is submitted on such re-issue of the warrant and the trial Court would be in a better position to adjudicate the claim and resolve the issues in favour of either parties. Therefore, this Court is of the view that the dismissal of the subject I.A. By the Judge, is not in order and the same is required interference of this Court."

9.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **V.Ganesan v. Kamal Jain and another** reported in **2013 (2) MWN (Civil) 619**, wherein it is stated as follows:

"Of course, it is true that in the normal course, without scraping the earlier report for defects, it is not possible to appoint a Commissioner for the same purpose. But here, the earlier Commissioner's report need not be scrapped because by re-issuing the warrant, the Commissioner is directed only to submit an additional report. Thus, both reports will be on the file of the Court."

10.An unreported judgment passed in C.R.P.(MD)No.1638 of 2013 is cited on the side of the petitioner. That order was passed by this Court in a connected matter between this petitioner and one Poolammal and in that connected matter, this Court has ordered re-issuance of the Commissioner warrant.

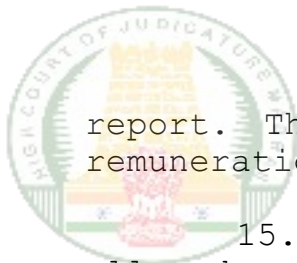


11. On the side of the respondent, it is stated that the plaintiff purchased the property in the year 1982. The revision petitioner disturbed his possession. Hence, this suit was filed. At the time of the Commissioner's visit, both the parties were present and that the petitioner has not filed any document on that date and that the Commissioner has filed his report during October 2011 and only to drag on the proceedings, the petitioner has filed this petition. The property is situated at Udhayapuri Nagar. There is no necessity to measure the property on the basis of Sumangali Nagar Lay out.

12. It is seen that there is a boundary dispute between the petitioner and the respondent. The petitioner purchased a property in Sumangali Nagar lay out. The respondent purchased a property in Udhayapuri Nagar. The case is only for bare injunction where only possession is to be proved. The Commissioner was already appointed by the trial Court and he has filed his report. The case of the petitioner is that the Commissioner refused to measure the property on the basis of the Sumangali Nagar lay out as there was no such specific orders from the trial Court. The case of the respondent is that the earlier Commissioner report has to be scrapped before re-issuing the Commissioner warrant and there is no necessity to measure a property, which is not the suit property.

13. It is seen that the petitioner has filed three petitions before this Court and one such petition was already allowed by this Court in C.R.P.(MD)No.1638 of 2013 on 25.06.2019. As the property of the defendant was purchased in Sumangali Nagar Extension lay out, an opportunity for the petitioner has to be given to measure the property with the help of that lay out and with the help of a Surveyor. The citation referred by the petitioner reveals that there is no necessity to scrape the earlier Commissioner report and that after re-issuance of the warrant, the Commissioner can file an additional report. Since the same Commissioner is going to re-visit the property, there is no necessity to scrape the earlier Commissioner report filed by the Commissioner. Hence, it is decided that re-issuance of the Commissioner warrant is necessary.

14. Since the case is pending from the year 2013, a direction should be given to the trial Court and to the Advocate Commissioner. The trial Court is directed to re-issue the Commissioner warrant within a period of two weeks from the date of receipt of copy of this order. The Commissioner is directed to measure the properties of both sides with the help of a Surveyor considering the documents of both the sides and to file an additional report within a period of three months from the date of receipt of re-issuance of the warrant. The trial Court is directed to dispose of the suit within a period of six months from the date of filing of the Commissioner



report. The revision petitioner is liable to pay the additional remuneration for the Commissioner to be fixed by the trial Court.

15. With the above direction, this civil revision petition is allowed and the order passed in I.A.No.2144 of 2011 in O.S.No.683 of 2009 dated 03.07.2013, on the file of the District Munsif Court, Tirunelveli is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Principal District Munsif,
Tirunelveli.

C.R.P. (PD) (MD) No.1640 of 2013

22.05.2020

MRN

SDS (03.06.2020) 5P-2C