



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P.(MD)No.514 of 2020

and

C.M.P.(MD)No.3333 of 2020

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1.K.Azhagammal
2.S.Singaravel
3.Ramaiya Chettiyar :Petitioners/Petitioners/Defendants
1 to 3

.. Vs ..

1.G.Krishnamoorthy
2.K.Santhaanam :Respondents 1 and 2/ Respondents 1
and 2/Plaintiffs

3.The Revenue Divisional Officer,
Saatchiyapuram, Sivakasi,
Virudhunagar District.

4.The Tahsildar,
Railway Feeder Road,
Srivilliputhur Taluk,
Virudhunagar District. : Respondents/Respondents/
Defendants 1 and 2

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decree made in I.A.No.1309 of 2016 in O.S.No.65 of 2015, dated 10.02.2020 on the file of the District Munsif and Judicial Magistrate Court No.I, Srivilliputhur.

For Petitioners :Mr.Thirunavukkarasu

For R1 and R2 :Mr.R.Bala Krishnan

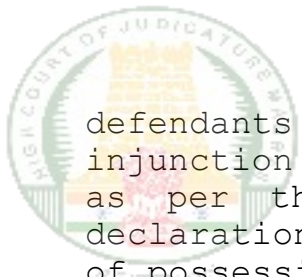
For R3 and R4 :No Appearance

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ORDER

This Civil Revision Petition is directed against the order of learned District Munsif and Judicial Magistrate No.I, Srivilliputhur, in I.A.No.1309 of 2016 in O.S.No.65 of 2015, dated 10.02.2020.

2.The revision petitioners are the defendants 1 to 3 in the suit in O.S.No.65 of 2015 on the file District Munsif and Judicial Magistrate Court No.I, Srivilliputhur. The respondents 1 and 2 herein, as plaintiffs, filed the said suit for a declaration that the sub division in favour of defendants 1 to 3 effected by the



defendants 4 and 5, dated 29.01.2004, is not valid and for mandatory injunction directing the defendants 4 and 5 to effect sub division as per the document of title deeds. The suit is also for declaration of title in respect of suit second item and for recovery of possession.

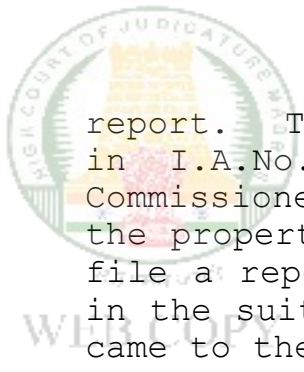
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3.The case of the plaintiffs in the suit is that the plaintiffs are the husband and wife and they have purchased the suit second item from one Perumalammal @ Rajakumari by a registered sale deed, dated 15.02.2001. Though the defendants 1 to 3 have also claimed certain rights in respect of some properties along with the suit property, the case of the plaintiffs is that some portion of the property, which belongs to the plaintiffs, had been encroached by the defendants 1 to 3 and that the defendants 1 to 3 have fraudulently created sub division records in their favour to grab the suit property. Though the plaintiffs and defendants 1 to 3 are claiming title on the basis of documents of title obtained through different sources, it is admitted before the lower Court that both the parties claim title under the members of same family. It appears that the parties to *lis* are aware of their source of title and litigate as purchasers from co-owners.

4.It is in the said circumstances, the plaintiffs filed an application in I.A.No.638 of 2015 in O.S.No.65 of 2015 for appointment of Advocate Commissioner to note down the physical feature and to measure the properties, which are in the enjoyment of the plaintiffs and defendants 1 to 3 and to identify the property with reference to the documents separately. The description of the property indicates that vast extent of land about 16 acres has to be measured by the Advocate Commissioner. There is no dispute with regard to the physical possession of properties by the plaintiffs as well as defendants 1 to 3.

5.It is the case of plaintiffs that the defendants 1 to 3 are in possession and enjoyment of more than what they are entitled to, as per the documents of title deed or as per the lawful holdings of their predecessor-in-interest. In such circumstances, the prayer in the petition for appointment of Advocate Commissioner gives an indication that the scope of Commission was to identify the properties, which are in the enjoyment of the respective parties and to measure the properties, so that the lawful holdings of every one of the parties and their physical enjoyment can be identified and fixed with reference to their documents of title deeds. This exercise was done by the Advocate Commissioner and the Advocate Commissioner appointed by the lower Court has also submitted an elaborate report on 03.10.2016.

6.The revision petitioners have not challenged the order appointing the Advocate Commissioner. However, the revision petitioners filed serious objection to the Advocate Commissioner's

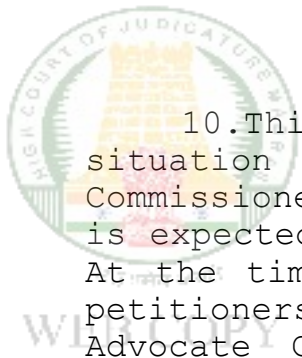


report. Thereafter, the revision petitioners filed an application in I.A.No.1309 of 2016 to scrap the report of the Advocate Commissioner and to appoint a new Advocate Commissioner to measure the properties with the help of Assistant Director of Survey and to file a report. The said application was opposed by the plaintiffs in the suit. The trial Court, after considering the facts in *toto*, came to the conclusion that the scrapping of report is not necessary and that the credibility of the report can be decided only at the time of trial. Aggrieved by the same, the present revision petition is filed.

7.The learned Counsel for the revision petitioners submitted that the Commissioner's report with reference to the enjoyment of the plaintiffs and defendants 1 to 3 is beyond the scope of his warrant and that the report has to be scrapped. The learned Counsel then contended that the Advocate Commissioner has submitted his report based on surmises. He submitted that the Advocate Commissioner failed to follow proper procedure regarding location of the land and its total extent as per revenue records. It is also contended by the learned Counsel for the petitioners that the Advocate Commissioner's report is totally perverse and erroneous and that serious prejudice will be caused to the parties, if the report is allowed to exist.

8.The learned Counsel for the revision petitioners relied upon the judgment of Honourable Supreme Court in the case of **Ram Lal and others vs Salig Ram and others**, reported in **2019 SAR (Civil) 315**, wherein, the Honourable Supreme Court has approved the principle that Clause (3) of Rule 10 of Order XXVI CPC gives the authority to the Court to direct any further enquiry, if it is warranted. When a further enquiry is contemplated by appointing a new Advocate Commissioner, the Court has to find how and why the Commissioner's report filed already is not useful or not trustworthy.

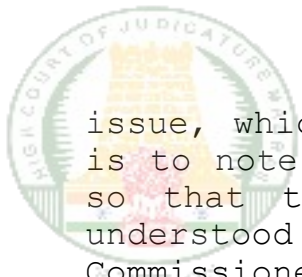
9.The learned Counsel for the revision petitioners then relied upon an order of this Court in **C.R.P. (MD)No.830 of 2017** in the case of **Muniammal vs Govindaraju and others**, dated 14.03.2017. The said revision petition was filed against the order scraping the report of Advocate Commissioner on the ground that the Advocate Commissioner has gone beyond the scope of Commission and that the warrant of Commission was dishonestly disobeyed by the Advocate Commissioner. In the case on hand, the Advocate Commissioner has filed an elaborate report covering each points, to which the parties are at dispute. The Advocate Commissioner's report clearly indicates that the defendants 1 to 3 are in possession enjoyment of the property more than what they are entitled to. In such circumstances, this Court is of the view that the revision petitioners have come forward with the petition to scrap the report mainly because, the report, in substance, is in favour of plaintiffs.



10.This Court on early occasions have dealt with several situation explaining the scope for appointment of Advocate Commissioner. The Advocate Commissioner is an Officer of Court, who is expected to file a report to help the Court in resolving issues. At the time of appointing the Advocate Commissioner, the revision petitioners have no grievance and the order of appointment of Advocate Commissioner has not been challenged by the revision petitioners. Merely because, the report of the Advocate Commissioner is not in favour of the revision petitioners, the revision petitioners can not file an application for scraping the report, as it is open to the revision petitioners to file any objections or document or material to discredit the report of the Advocate Commissioner. In other words, the findings of Advocate Commissioner in his report is not final and subject to scrutiny. Unless, the Advocate Commissioner's report is free from bias, irregularity and within the scope of warrant, it cannot be accepted in full. In the present case, this Court is unable to find that the report of Advocate Commissioner is wholly untrue, unreliable or irrelevant. Hence, it cannot be scrapped. However, the lower Court will examine the credibility of report at the time of hearing on the basis of objections raised by the revision petitioner.

11.In the present case, the Advocate Commissioner has filed the report elaborately after recording the measurements on the basis of documents of title and the contention of parties in their respective pleadings. He has given findings which are relevant. The learned Counsel for the revision petitioner submitted that the Advocate Commissioner has not measured the properties as per the document of title deeds and that therefore, the Advocate Commissioner's report is liable to be scraped. If the Court starts entertaining applications to scrap the Advocate Commissioner's report, every litigant, who is aggrieved by the report or who finds that the report is not in favour of particular party, will file a petition to scrap the report. The Court cannot indulge in such exercise, as the same will delay the proceedings before any Court. However, the Court may see whether the Advocate Commissioner has executed the warrant, so that the report of the Commissioner will have some assistance to the Court to resolve the issue. If the Advocate Commissioner's report is defective, the Court can issue further direction to the same Advocate Commissioner. Similarly, even if the Advocate Commissioner fails to note down certain features, which are required for resolving the issue, the warrant can be re-issued to same Advocate Commissioner to make the report complete and useful.

12.Regarding appointment of second Advocate Commissioner, the Court can exercise such power, only when the report of the Advocate Commissioner is liable to be scraped. The petitioner in the present application has sought for scrapping the report on the ground that the Commissioner has found something, which is beyond the scope of warrant. The Advocate Commissioner is not supposed to resolve any



issue, which is not within his purview. The object of Commissioner is to note down the physical feature to the understanding of Court, so that the problems relating to extent and boundaries can be understood for resolving the dispute. Merely because, the Commissioner has stated something beyond his purview in his report, that does not mean that the whole report is liable to be scrapped or the Advocate Commissioner's report cannot be relied upon for any purpose. If the Advocate Commissioner's report is challenged on specific grounds, the Court will consider at the time of hearing the case. The Court can always give further direction to the Advocate Commissioner, only when the Court is convinced that it is required in the interest of justice. Leaving it open to the lower Court to do such exercise, if warranted at the time of hearing, this Court is of the view that the petition filed by the revision petitioners for scrapping the Advocate Commissioner's report cannot be entertained in this case.

13.As a result, this Civil Revision Petition is dismissed. The order of learned District Munsif and Judicial Magistrate No.I, Srivilliputhur, in I.A.No.1309 of 2016 in O.S.No.65 of 2015, dated 10.02.2020, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

To

1.The District Munsif and Judicial Magistrate No.I, Srivilliputhur.

2.The Revenue Divisional Officer,
Saatchiyapuram, Sivakasi,
Virudhunagar District.

3.The Tahsildar,
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