



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.02.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI
C.R.P. (PD) (MD) No.1056 of 2019

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R.Rajendran

.. Petitioner/ Petitioner/
Petitioner/Plaintiff

Vs.

Rajathi

.. Respondent/ Respondent/
Respondent/Defendant

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and executable order dated 19.12.2018 passed in the application in I.A.No.548 of 2018 in I.A.No.213 of 2014 in O.S.No.439 of 2014 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur.

For Petitioner : Mr.T.R.Jeyapalam

ORDER

Heard the learned counsel appearing for the petitioner.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.548 of 2018 in I.A.No.213 of 2014 in O.S.No.439 of 2014 dated 19.12.2018 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur.

3.The petitioner herein is the plaintiff and the respondent herein is the defendant in the suit. The petitioner herein has filed a suit in O.S.No.439 of 2014 for declaration and possession and to remove the super structure and for mesne profits. In that suit, the petitioner has filed a petition in I.A.No.213 of 2014 for appointment of an Advocate Commissioner. In that I.A. Petition, the petitioner has filed an application in I.A.No.548 of 2018 to re-issue the Commissioner warrant to measure the property with the help of the Head Surveyor. The petition was dismissed by the trial Court. Against which, the revision petitioner preferred this civil revision petition.

4.The brief substance in I.A.No.548 of 2018 is as follows:

The Commissioner has filed his report on 05.04.2018, but the petitioner read the report only on the date prior to the filing of the petition. A perusal of the Commissioner report reveals that the Commissioner has not measured the property properly and it is stated that Surveyor, who accompanied the Commissioner, failed to take note of the old FMB sketch. Hence, the Commissioner warrant may be re-issued to the same Commissioner for measuring the property with the help of Head Surveyor.



5.The respondent was set exparte in that petition. The trial Court dismissed the petition on the ground that the earlier Commissioner report was not struck off and no objections was filed on the Commissioner report. Against which, the revision petitioner has filed the present petition.

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6.On the side of the petitioner, it is stated that the objection petition was not filed in time and the delay excuse petition to file this petition was dismissed by the trial Court. The trial Court after dismissing the delay excuse petition, dismissed this petition stating that no objection was filed on the Commissioner report. It is further stated that there is no necessity to struck off of the Commissioner report, as the petitioner is not demanding for appointment of a fresh Commissioner. The petitioner prayed only to re-issue the warrant to the same Advocate Commissioner.

7.A perusal of the records reveals that the trial Court dismissed the petition on the ground that no objection was filed for the Commissioner report and no prayer is sought for to struck off the earlier Commissioner report. It is seen that the petitioner has filed a delay excuse petition to condone the delay in receiving the objection petition. That petition was dismissed by the trial Court on the same date.

8.It is seen that the petitioner has not sought for appointment of a fresh Commissioner and there is no necessity to strike off the earlier Commissioner report. The allegation of the petitioner is that the Surveyor has not taken note of the old FMB sketch, while measuring the property and the petitioner requests that the Commissioner has to visit the property and measure the same with the help of Head Surveyor. The petitioner being the plaintiff is under the obligation to prove the case. The respondent was set exparte and the respondent did not contest this petition. In the above circumstances, an opportunity for the petitioner to put forth the case is to be given.

9.Hence, the order passed in I.A.No.548 of 2018 in I.A.No.213 of 2014 in O.S.No.439 of 2014 dated 19.12.2018 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur is set aside and this Civil Revision Petition is allowed. No Costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



The District Munsif cum Judicial Magistrate, Peraiyur.

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