



C.R.P. PD No.71 of 2020
and CMP No.458 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (PD) No.71 of 2020
and CMP No.458 of 2020

M.Shanmugam

.. Petitioner

Vs.

Mahadevi

.. Respondent

PRAYER: Civil Revision Petition filed Article 227 of the Constitution of India, to set aside the fair and decretal order dated 22.10.2019 made in IA No.256 of 2018 in I.A.No.532 of 2015 in O.S.No.41 of 2015 on the file of the District Munsif Court, Sankari.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.N.Manokaran



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ORDER

Challenge in this Revision is to the order of the Trial Court namely the District Munsif Court, Sankari, made in I.A.No.256 of 2018, an application filed by the plaintiff in the suit seeking to scrap the report of the Commissioner that was filed pursuant to the order of the Court in IA No.532 of 2015.

2. The original suit in OS No.41 of 2015 was filed by the first respondent seeking partition and several other reliefs including a right of way over some items of properties. Application in IA No.532 of 2015 was filed by the twelfth defendant seeking appointment of a Commissioner to inspect the suit properties and file a report of the physical features.

3. The said application came to be allowed on 08.02.2017 and the Commissioner eventually filed the report. The petitioner herein has filed objections to the Commissioner's report also. Thereafter, the respondent herein namely the plaintiff filed IA No.256 of 2018 sought to scrap the report of the Commissioner contending that the Commissioner had travelled



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beyond the scope of the warrant and the Commissioner's report is flawed.

The learned Trial Judge accepted the claim of the respondent and scrapped the report.

4. I have heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner and Mr.N.Manokaran, learned counsel appearing for the respondent.

5. Mr. R.Marudhachalamurthy, learned counsel appearing for the petitioner would vehemently contend that the Trial Court erred in coming to the conclusion that the report is flawed without examining the Commissioner. He would also point out that this Court had repeatedly held that the Commissioner's Report cannot be scrapped for the asking and it will be open to a party would challenges the Commissioner's Report to examine the Commissioner to demonstrate that the report is flawed. Only after considering such evidence, the Court can come to the conclusion on the veracity of the report of the Commissioner.



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6. Contending contra, Mr.Manokaran, learned counsel appearing for the respondent would submit that the trial Court had come to the conclusion that the Commissioner had exceeded his warrant and therefore, the report is liable to be scrapped. I am unable to agree with the contentions of the learned counsel.

7. This Court had repeatedly held that the Commissioner's Report cannot be scrapped and the Commissioner's Report can be scrapped only after the entire evidence is made available to the Court and it is demonstrated that the Commissioner's Report is flawed. Admittedly, the evidence has not been recorded in the suit. The commissioner has not been examined. Therefore scrapping of the report at this stage, in my considered opinion, is premature.

8. Hence the order of the Trial Court is set aside, IA No.256 of 2018 will stand dismissed. However, it will be open to the respondent herein to examine the Commissioner and demonstrate that the report is flawed. If the trial Court arrives at the conclusion, after the evidence is recorded, that the



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report of the Commissioner is flawed and it is liable to be scrapped, it will be open to the trial Court to scrap the report.

9. In the result, the Civil Revision Petition will stand allowed with the above observation. Consequently, the connected miscellaneous petition is closed. No costs.

23.11.2021

jv

Index: No
Internet: Yes
speaking order

To

1. The District Munsif Court,
Sankari.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

jv

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