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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2159 of 2013

and

M.P No.1 of 2013

Veerappan

..Appellant/Respondent/Defendant

Vs.

Thangaraj

..Respondent/Appellant/Plaintiff

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of CPC, to set aside the judgment and decree dated 19.03.2013 made in A.S No.57 of 2011 on the file of the Sub Court, Mayiladuthurai, remanding the judgment and decree dated 18.01.2011 made in O.S.No.375 of 2006 on the file of the Principal District Munsif Court, Mayiladuthurai.

For Appellant : Mr.S.Sounthar

For Respondent: Mr.K.Govi Ganesan

J U D G M E N T

The judgment and decree dated 19.03.2013 passed in A.S No.57 of 2011 is under challenge in the present Civil Miscellaneous Appeal.

2. The defendant is the appellant in the present appeal. The respondent instituted the suit for recovery of possession. The suit was dismissed against which the respondent/plaintiff filed first appeal. During the pendency of the appeal, the respondent filed an interlocutory application to appoint an Advocate Commissioner to survey the property and submit a report.

3. The learned counsel appearing on behalf of the appellant mainly contended that the said exercise was already done by the trial Court by affording opportunity to all the parties to the original suit. The Advocate Commissioner was appointed, who in turn submitted a report and the report was



considered by the trial Court while dismissing the suit. Thus, there is no occasion to appoint a second Advocate Commissioner by the first Appellate Court and for that purpose, remand is improper and not in consonance with the established principles.

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4. The learned counsel appearing for the respondent objected the said contention by stating that the report of the first Advocate Commissioner itself is in favour of the plaintiff and therefore, the trial Court has committed an error in dismissing the suit.

5. This Court is of the considered opinion that it is an admitted fact that the Advocate Commissioner was appointed in the suit by the trial Court and the report submitted was taken to file. The report of the Advocate Commissioner was marked as documents C1 to C4. The said documents were considered by the trial Court while dismissing the suit.

6. This being the factum, the first Appellate Court ought not to have remanded the matter back for appointment of the second Advocate Commissioner for the purpose of measuring the suit property. Such a repeated appointment of the Advocate Commissioner would serve no purpose and do no service to the cause of justice. Once the Advocate Commissioner is appointed and the report is received, unless there is a serious doubt, the Courts need not engage another Advocate Commissioner for the purpose of resurvey or to submit another report. Such a practice would lead to multiplicity of proceedings and would protract the matter. The Courts are appointing Advocate Commissioner to find out certain facts regarding the physical features of the suit property. While doing so if an extraordinary circumstance arise, the Court is unable to understand the measurements or the report is ambiguous, then alone the Court shall engage another Advocate Commissioner and not otherwise. Repeated measuring of the property without any valid reason is certainly not preferable and therefore, the first Appellate Court has committed an error in remanding the matter back for appointment of second Advocate Commissioner for the purpose of measuring the suit property.

7. This being the factum established, the first Appellate Court has to rely on the report of the Advocate Commissioner which was marked as documents C1 to C4 before the trial Court and accordingly decided the issues on merits and in accordance with law by affording opportunities to all the parties to the appeal suit.



8. Accordingly, the judgment and decree dated 19.03.2013 passed in A.S No.57 of 2011 is set aside and the appeal suit is remanded back before the first Appellate Court for hearing of the parties and decide the issues on merits and in accordance with law. The first Appellate Court is directed to dispose of the appeal suit as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this judgment.

9. The parties are restrained from seeking unnecessary adjournments. Even in case, adjournments are to be granted on genuine grounds and the Court should record the reasons. The adjournments on flimsy grounds are liable to be rejected in limini.

10. In the result, the present Civil Miscellaneous Appeal stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Sub Court
Mayiladuthurai

2. The Principal District Munsif Court
Mayiladuthurai

3. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K.Govi Ganesan, Advocate sr 1490.

C.M.A.No.2159 of 2013
M.P.No.1 of 2013

AD(CO)
SP(25/04/2022)