

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

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THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(PD).Nos.2009 to 2011 of 2018
and C.M.P.No.11876 of 2018

1.Natanasabapathi
2.Ramesh

... Petitioners in all C.R.Ps

Versus

Rajikumar

... Respondent in all C.R.Ps

Prayer in C.R.P.No.2009 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.11.2017 passed in I.A.No.669 of 2017 in O.S.No.24 of 2012 on the file of the Additional District Munsif, Chidambaram.

Prayer in C.R.P.No.2010 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.12.2017 passed in I.A.No.693 of 2017 in O.S.No.24 of 2012 on the file of the Additional District Munsif, Chidambaram.

Prayer in C.R.P.No.2011 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.03.2018 passed in I.A.No.181 of 2018 in O.S.No.24 of 2012 on the file of the Additional District Munsif, Chidambaram.

In all C.R.Ps

For Petitioners : Mr.A.Muthukumar
For Respondent : Mr.R.Gururajan

COMMON ORDER

C.R.P(PD).No.2009 of 2018 has been filed challenging the order dated 22.11.2017 in I.A.No.669 of 2017 in O.S.No.24 of 2012 on the file of the Additional District Munsif, Chidambaram.

C.R.P(PD).No.2010 of 2018 has been filed challenging the order dated 14.12.2017 in I.A.No.693 of 2017 in O.S.No.24 of 2012 on the file of the Additional District Munsif, Chidambaram.

C.R.P(PD).No.2011 of 2018 has been filed challenging the order dated 27.03.2018 in I.A.No.181 of 2018 in O.S.No.24 of 2012 on the file of the Additional District Munsif, Chidambaram.

2.Mr.A.Muthukumar, learned counsel appearing for the Revision Petitioner submitted that initially the Court below appointed the Advocate Commissioner to measure the suit property in Survey No.83/1B with the assistance of the Surveyor, to locate 'B' Schedule property and to file the report and plan. Accordingly, the Advocate Commissioner inspected the

property and filed the undated report, which is filed in Page No.20 of the typed set of documents along with the plan.

3.The learned counsel for the Revision Petitioner further submitted that, the Advocate Commissioner measured the property on 24.09.2016 and filed his report. Against the said report, the Revision Petitioner herein filed the following objection in the form of counter in I.A.No.204 of 2013:

(i) The plan is not correct since they have not mentioned the directions properly.

(ii) Though the Village Administrative Officer was not present, the Advocate Commissioner has stated in his report that the Village Administrative Officer was present.

(iii) The plea on the part of the Revision Petitioner was to ascertain the boundaries of Survey No.83/1A, 1B, 1C, 83/2, 83/3 and 83/4. But the Commissioner without ascertaining the boundaries of the above survey numbers, has proceeded to survey the property.

(iv) In the report, the Commissioner has referred 'ABCDE' 'BE' 'BD' and 'G-Line' but nothing has been marked in the plan as 'ABCDE' 'BE' 'BD' and 'G-Line'. The property was not measured as per the memo of

instructions given by the Revision Petitioner.

(v) The Advocate Commissioner in his report in the contrary manner has stated that 'PQRST' are the encroached portion.

4.The learned counsel further submitted that the Advocate Commissioner has no authority to state the possession of the petitioner in the suit property as encroachment made him. Whereas, he can only say about the possession of the property. It is for the Court to decide whether there is any encroachment or not. Therefore, the Advocate Commissioner exceeded his authority and filed the report.

5.The learned counsel further submitted that though the above objections were filed against the Advocate Commissioner's report, the Court has not considered all these objections. Thus, the Revision Petitioner filed the separate application in I.A.No.693 of 2019 to scrap the report of the Advocate Commissioner. The said application was dismissed by the Court below for the reason that the respondent herein filed the application in I.A.No.669 of 2017 for amendment of 'B' Schedule property and the same was allowed based on the Advocate Commissioner's report.

The Court below has not given any finding on the objections raised by the Revision Petitioner in I.A.No.693 of 2017, therefore, it is a non-speaking order and the same is liable to be set aside.

6.Further, the Court below allowed the I.A.Nos.669 of 2017 and 181 of 2018 filed for amending the plaint based on the Advocate Commissioner report without any reference to the objections raised by the Revision Petitioner. Therefore, he submitted that order passed in the above three application are non-speaking orders. Hence, the said orders are liable to be set aside and pleaded to remand back this matter for re-adjudication by the Court below and pass appropriate order after considering the objections raised by the Revision Petitioner to the Advocate Commissioner report.

7.Mr.R.Gururajan, the learned counsel for the respondent submitted that the Court below has appointed the Advocate Commissioner, the Advocate Commissioner found that there is an encroachment in the suit schedule property. The encroached portion was referred in the plan of the Commissioner and based on the said Commissioner's report, the

application for amending the plaint was filed through I.A.No.669 of 2017 and I.A.No.181 of 2018 and the same was allowed by the Court below stating that rejecting the amendment application will leads to the multiplicity of the proceedings and the objections raised by the petitioners on the Advocate Commissioner's report with regard to the encroachment will be considered at the time of trial. Therefore, the Court below has rightly allowed the above two application and dismissed I.A.No.693 of 2017, filed to scrap the report of the Advocate Commissioner. Therefore, he prayed for dismissal of all three Civil Revision Petitions.

8.Upon hearing and perusal of the document, it appears that the Court below appointed the Advocate Commissioner in I.A.No.204 of 2013 to measure the suit schedule property with the help of the surveyor and to file the report and plan. Accordingly, the Advocate Commissioner measured the property and filed the report and plan. Mere perusal of the Advocate Commissioner's report would show lot of discrepancies. He has mentioned and referred 'ABCDE', 'BE', 'BD' and 'G-Line' in his report, but, the same were not mentioned in his plan. The Advocate Commissioner in his report has stated that 'PQRST' is an encroached portion. This Court is

unable to understand, how the Advocate Commissioner can say that 'PQRST' is an encroached portion, he cannot say any particular portion is encroached or not, he can only say about, who is in the possession of the property and it is for the Court to decide whether the said portion is encroached or not. Therefore, the Advocate Commissioner has exceeded his scope of appointment and filed the report. Further, the Advocate Commissioner has stated that as per the memo of instructions provided by the Revision Petitioner, he has measured the Survey Nos.83/1-A, 1-B, 1-C, 83/2, 83/3 and 83/4, but he has not mentioned in the plan where those portions are situated.

9.From the perusal of the order passed by the Court below in all the applications, it is clear that the Court below has not passed the speaking order in I.A.No.693 of 2017, which was filed for scarping the Advocate Commissioner's report and dismissed the same by simply stating that already the amendment application filed by the respondent in I.A.No.669 of 2017 was allowed. The reason given by the Court below is not proper. The Court below ought to have considered the objections raised by the Revision Petitioner and should have passed the detail order.

10.As far as the order passed in I.A.Nos.669 of 2017 and 181 of 2018 are concerned the Court below has provided the reason for allowing the said applications was that the Advocate Commissioner's report necessitate the amendment and hence, the said applications are allowed

11.This Court is of the view that before passing any order in all the three applications, the Court should have dealt with all the objections raised by the parties to the suit, point by point and ought to have provided the reason for rejecting the said objections. No such exercise was done by the Court below. Further, in the present case, subsequent to the filing of the objection by the Revision Petitioner, the Advocate Commissioner was not allowed for cross-examination. The Court below should have allowed the Revision Petitioner to cross examine the Commissioner and no such exercise was also done by the Court below.

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12.However on behalf of the respondent, the learned counsel made a submission that all the objections made against the Commissioner's report will be dealt with only after the trial before the Trial Court and thus it is

not necessary for the Court below to deal with the objections at the time of hearing the application for amending the plaint. This Court is not in a position to accept the submission made by the learned counsel for the respondent that based on the Commissioner's report, the respondent herein filed two application for amendment and the Court below also accepted those amendments based on the said Commissioner's report. When the Revision Petitioner made a categorical objection to scarp the Commissioner's report, without considering the plea of the Revision Petitioner the Court below has allowed the application filed by the respondents to amend the plaint based on the Commissioner's report, which is not proper. The objection of the Commissioner's report may be considered at the time of the Trial, in the event, if there were no applications for the amendment of plaint based on the Commissioner's report. In the present case, the situation is different, the respondent filed two applications for amendment totally relying on the Commissioner's report in which cases, the Court below should have considered the objection raised by the Revision Petitioner on the Commissioner's report before considering the application for amendment. Therefore, this Court find fault on the decision making process of the Court below.

13.This Court also noticed that the application for appointment of Advocate Commissioner was filed on the following prayer:

"Petition filed by Petitioner under Order 26 Rule 9 r/w Sec. 151 CPC

For the reason stated in the accompanying affidavit, it is prayed that this Court may be pleased to appoint an advocate as Commissioner to inspect the suit properties and the property of respondents in R.S.No.83/1B with the assistance of a qualified surveyor, measure the properties, locate 'B' schedule property, file report and plan and grant other just and necessary reliefs in the circumstances of this case deems fit."

14.The application was filed for appointment of Advocate Commissioner under Order 26 Rule 9 praying to inspect the suit property the property of respondents in R.S.No.83/1B with the assistance of a qualified surveyor, measure the properties, locate 'B' schedule property, file report and plan. The said application was allowed by the Court below.

15.When such being the case, mere perusal of the Advocate

Commissioner report, it appears that the Advocate Commissioner has not filed the report as per the direction of the Court below but he has stated in his report that there was an encroachment by the Revision Petitioner herein. Under these circumstances, the Court below necessarily should have allowed the Revision Petitioner/Objector to cross examination of the Advocate Commissioner and thereafter, the said objections should have been disposed of. The Court below disparately failed to do such exercise.

16.As this Court is unable to trace any reason to substantiate the order passed by the Court below in all the three applications and in view of the fact that the order passed by the Court below in all the three applications are non-speaking order without assigning any proper reason, and find fault in the decision making process of the Court below, the order passed in I.A.No.693 of 2017 dated 14.12.2017, I.A.No.693 of 2017 dated 22.11.2017 and I.A.No.181 of 2018 dated 27.03.2018 are liable to be set aside. While setting aside the order, this Court remand back this matter for re-adjudication in all the three applications. The Court below is directed to allow the petitioner to cross examine the Advocate Commissioner, if so advised. Thereafter, after hearing both the parties, the

Court below is directed to pass order to meet out the objections raised by the revision petitioner for the un-dated Advocate Commissioner's report.

17.After the disposal of the objections, the Court below shall hear all the three applications afresh and pass orders in accordance with law. It is made clear the Court below shall permit the Revision Petitioner to cross examine the Advocate Commissioner in I.A.No.693 of 2017.

18.With the above directions, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

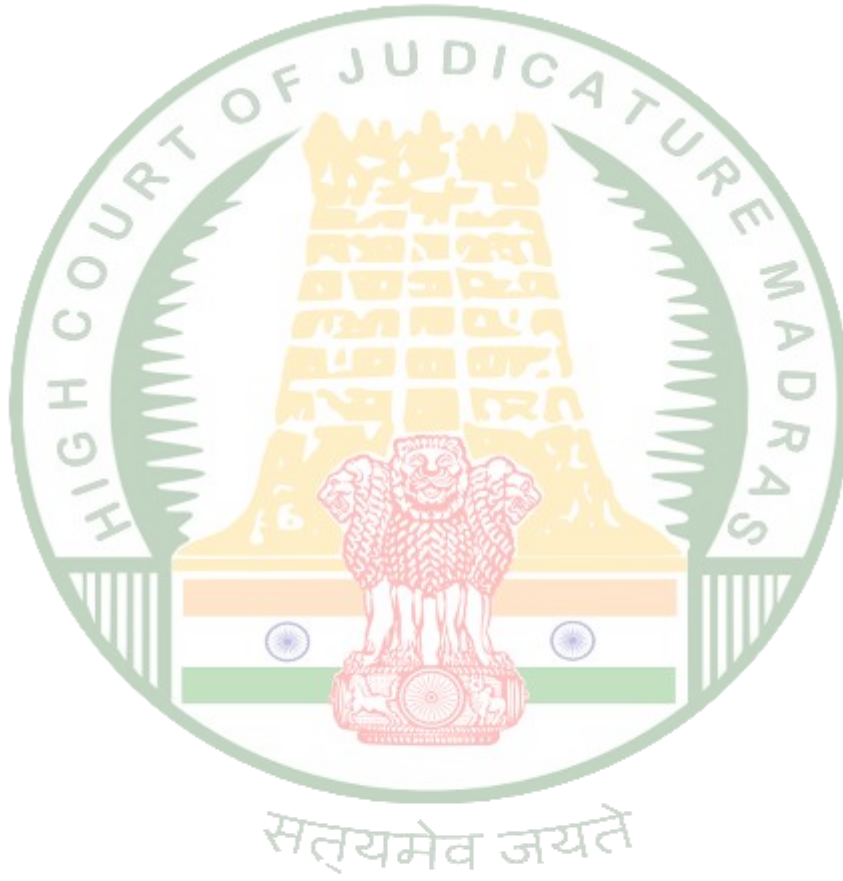
24.03.2021

Index: Yes/No
Internet: Yes/No
Speaking Order / Non Speaking Order
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To:

The Additional District Munsif, Chidambaram.



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KRISHNAN RAMASAMY.J.,

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