

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD).No.2148 of 2018
and C.M.P.No.13331 of 2018

Mayilsamy

...Petitioner

Vs

Muthusamy

... Respondent

Prayer Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and decreetal order dated 08.06.2018 made in I.A.No.775 of 2017 in S.A.No.409 of 2011 in O.S.No.385 of 2007 on the file of the District Munsif Court, Dharapuram.

For Petitioner : Mr.A.K.Sridharan

For Respondent : Mr.Ma.P.Thangavel

ORDER

This Civil Revision Petition has been filed against the order dated 08.06.2018 made in I.A.No.775 of 2017 in S.A.No.409 of 2011 in O.S.No.385 of 2007 on the file of the District Munsif Court, Dharapuram.

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2.I.A.No.775 of 2017 was filed by the Revision Petitioner/1st defendant to re-issue the warrant of Advocate Commissioner, to revisit the suit schedule

property and to file an additional report and plan.

3.The learned counsel for the Revision Petitioner submitted that the respondent/plaintiff filed an application in I.A.No.409 of 2011 to appoint an Advocate Commissioner to measure the suit schedule property with the assistance of the Surveyor. Accordingly, the Court below appointed the Advocate Commissioner and the property was also measured with the assistance of the Surveyor. The grievance of the Revision Petitioner is that, though the Advocate Commissioner was appointed and the property was measured with the help of the Surveyor, the Surveyor failed to measure the property in a proper way. Therefore, the Revision Petitioner filed I.A.No.775 of 2017 to re-issue the warrant of the Advocate Commissioner to measure the suit schedule property once again. He further submitted that no separate objection was filed by the Revision Petitioner for the Advocate Commissioner's report, only the application to reissue the warrant was filed in the form of objection. Further, there is no impediment to the respondent in re-issuing the warrant of the Advocate Commissioner, whereas it helps to sort out the unnecessary problems. Therefore, he prayed to set aside the order passed by the Court below in

I.A.No.775 of 2017.

4.Per Contra, the learned counsel for the respondent/plaintiff submitted that the application for appointing Advocate Commissioner was filed in the year 2017. Accordingly, the Advocate Commissioner was appointed by the Court below and the suit schedule property was measured with the assistance of the Surveyor in the presence of the petitioner as well as the respondent and their respective counsel, thereafter, the report was also filed by the Advocate Commissioner. The petitioner without filing an objection to the Advocate Commissioner's report and scarping the earlier report, has filed the application to re-issue the warrant of the Advocate Commissioner, which is unsustainable. In support of his contention, the learned counsel has referred the order of this Court in the case of ***K.Balasubramani Vs. A.Krishnasamy Naicker and Others*** reported in ***CDJ 2018 MHC 6829***.

5.Heard the learned counsel for the petitioner as well as the respondent and perused the materials.

6. Admittedly, the application in I.A.No.409 of 2011 was filed for the appointment of the Advocate Commissioner to measure the suit schedule property with the assistance of the Surveyor and subsequent to the filing of the report, admittedly, no objection was filed by any of the parties. However, the Revision Petitioner filed an objection by way of the application in I.A.No.775 of 2011 to re-issue the warrant of the Advocate Commissioner.

7. The law settled by this Court with regard to re-issuing of the warrant is that, before re-issuing the warrant the earlier report of the Advocate Commissioner has to be scrapped. For this exercise, the petitioner has to file an objection before the Court below and the Court below after hearing both the parties has to pass an appropriate order. In the present case, no such exercise was made, whereas, the Revision Petitioner has straightaway filed the application to re-issue the warrant of the Advocate Commissioner. As contended by the learned counsel for the respondent, this Court has strongly taken a view that unless and until the earlier Advocate Commissioner's report is scrapped, the question of re-issuing the warrant does not arise at all. At this juncture, it is appropriate to extract the relevant portion of the order passed by

this Court in case of ***K.Balasubramani Vs. A.Krishnasamy Naicker*** as stated supra.

“5.The learned counsel for the respondents appeared and made his submissions that the present petition in I.A.No.21 of 2006 is not maintainable, since the applications filed in the suit for appointment of Advocate Commissioners were allowed and thereafter, the Commissioners filed their reports, but the revision petitioner did not file his objection to the Advocate Commissioner's reports. In these circumstances, the application filed in I.A.No.21 of 2006 in A.S.No.124 of 2002 was rejected the appellate Court. Hence, there is no case for the petitioner once again to approach this Court by way of Civil Revision Peititon. In support of his cotention, he has relied upon the decision of this Court in A.Elumalai v. G.Vijayalakshmi reported in 2016 (3) MWN (Civil), Wherein, it is held as follows:

“9.When the Commissioner's report filed before the Trial Court was not scraped by the Trial Court and when the Advocate Commissioner was subjected to cross-examination by the parties, there is absolutely no necessity for seeking for appointment of 2nd Advocate Commissioner or to re-issue the warrant of commission to the same Commissioner. The findings of the Trial Court have to be canvassed by the parties only based on the available materials.

11.In the case on hand, when the parties had let

in oral and documentary evidence and also filed their objections before the Trial Court to the Commissioner's report, there is absolutely no necessity for re-issuing Warrant of Commission to the same Commissioner. If the Warrant of Commission is re-issued, it would only create further complications in the matter and it will not help the Court in deciding the matter in a proper manner.”

6. Therefore, the principles laid down by this Court, makes it clear that the without scraping the earlier two Advocate Commissioners' reports filed in the Lower Court, the petitioner cannot file once again an application for the same relief. Accordingly, the above decision is squarely applicable to the present case on hand. Since the petitioner filed the said application without scraping the earlier Advocate Commissioner's reports, the same is not maintainable and liable to be rejected. Hence, this Court is of the opinion that the application filed in I.a.No.21 of 2006 in A.S.No.124 of 2002 was rightly dismissed by the Lower Court and therefore, it does not warrant any interference.”

8. In view of the above, this Court does not find any merits in the submission made by the learned counsel for the Revision Petitioner and unless and otherwise the earlier report is scraped, the Court below cannot pass any order to re-issue the warrant. Therefore, this Court does not find any infirmity

in the order passed by the Court below. If at all the Revision Petitioner wants to make any objection with regard to the Advocate Commissioner's report, the Revision Petitioner shall file the objection before the Court below within a period of one week from the date of receipt of a copy of this order and if necessary, the Revision Petitioner shall be permitted to cross examine the Advocate Commissioner. Thereafter, the Court below shall take a decision, whether the report of the Advocate Commissioner's report is liable to be scraped or not and pass further order. The above said entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

9. With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2021

Index: Yes
Internet: Yes
Speaking order

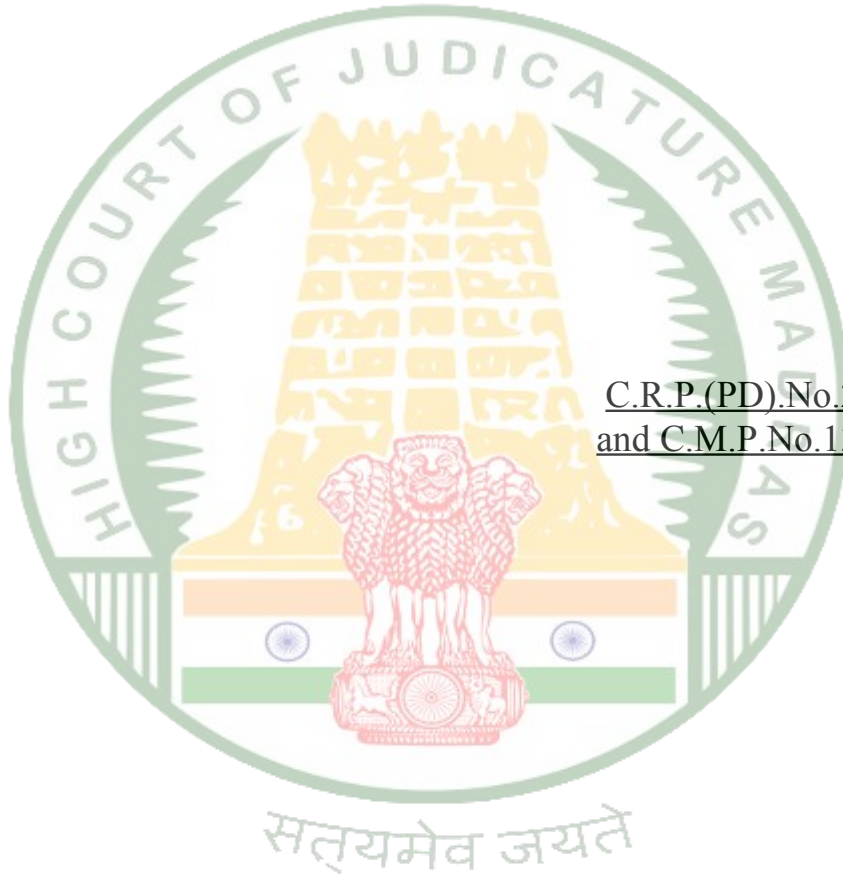
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To:
The District Munsif Court, Dharapuram.

Note: Issue Order copy on 05.03.2021

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KRISHNAN RAMASAMY,J.

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