

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020

PRONOUNCED ON : 21.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.2406 of 2016

CMP.No.12414 of 2016

(Through Video Conferencing)

Elamvazhudi

Petitioner

Vs

Sakunthala

Respondent

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 28.03.2016 passed in IA.No.22 of 2016 in IA.No.118 of 2009 in AS.No.22 of 2008 by the Additional Sub Court, Villupuram.

For Petitioner : Ms.R.Meenal

For Respondent : Mr.T.K.Saravanan

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal order, dated 28.03.2016 passed in IA.No.22 of 2016 in IA.No.118 of 2009 in AS.No.22 of 2008 by the Additional Sub Court, Villupuram.
2. The facts of the case, in a nutshell, are that the Petitioner herein is the Respondent in the appeal and the Defendant in OS.No.351 of 2005 and that the Respondent is the Appellant in the appeal and the Plaintiff in the said

suit. The suit was filed for declaration of title, for possession and for future mesne profits. Since the suit was dismissed, the Defendant has filed the appeal, in which, the Plaintiff has filed IA.No.118 of 2009, seeking appointment of an Advocate Commissioner to note down the physical features of the suit property. By order dated, 07.10.2009, an Advocate Commissioner was appointed and the suit property was inspected on 11.01.2014 and the report and plan of the Advocate Commissioner were filed on 23.02.2016. The present application has been filed by the Defendant to reopen IA.No.118 of 2009 to consider his objection to the report and plan submitted by the Advocate Commissioner and to scrap the said report and plan. In and by the impugned order, the said application was dismissed. Hence, this Civil Revision Petition has been filed.

3. The learned counsel for the Petitioner has submitted that since the report and plan were filed after two years from the date of inspection, the court below ought to have refused to receive the same and that the court below erred in closing the application and hence, Petitioner has filed this Civil Revision Petition. The learned counsel has placed reliance on **2000 1 LW 893 (Veppanathar Vs. Kaliappan)**.
4. The learned counsel for the Respondent has submitted that the credibility of the report and plan of the Advocate Commissioner can be decided only at the time of disposal of the appeal and hence, scrapping of the same is not necessary. The learned counsel has placed reliance on an **unreported judgement of the Madurai Bench of this Court, dated 21.08.2020 made in**

CRP(MD)No.514 of 2020.

5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
6. In the case on hand, in IA.No.118 of 2009, the Advocate Commissioner was appointed on 07.10.2009 and he had inspected the suit property on 11.01.2014 and his report and plan were filed on 23.02.2016. The objection to the report and plan was received by the Court. Thereafter, the Petitioner has filed the present application to reopen IA.No.118 of 2009 and to scrap the report and plan in the year 2016.
7. The Advocate Commissioner is an Officer of the Court, who is expected to file a report to help the Court in resolving the issues. In this case, the objection to the report and plan of the Advocate Commissioner, filed by the Petitioner was also received by the Court.
8. The findings of the Advocate Commissioner in his report and plan are not final and subject to scrutiny of the Court. Only when the report and plan suffer from any irregularity, they can be rejected. However, the court below shall examine the credibility of the report and the plan of the Advocate Commissioner at the time of arguments, on the basis of objections filed by the Petitioner. If any irregularity is found in the report and the plan and certain features of the suit property are allegedly stated to be omitted, suitable directions can be issued by the Court. In such view of the matter, this Court is of the view that at this stage, the application filed by the Petitioner for scrapping the report and plan filed by the Advocate

A.A.NAKKIRAN, J.

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Commissioner cannot be entertained in this case and accordingly, the court below is right in passing impugned order, which warrants no interference by this Court.

9. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

21.01.2021

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The Additional Sub Court, Villupuram.

Pre-Delivery Order in
CRP(NPD)No.2406 of 2016

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