

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) Nos.3301 & 3302 of 2017
and C.M.P.No.15420 of 2017

Kuppuswamy

... Petitioner in
both CRPs

Vs.

Subban

... Respondent in
both CRPs

Common Prayer :- Civil Revision Petitions are filed under Article 227 of Constitution of India, to set aside the fair and decreetal orders dated 05.08.2017 passed in I.A.Nos. 702 & 703 of 2016 in I.A.No.512 of 2012 in O.S.No.152 of 2012 respectively, on the file of the District Munsif Court, Paramathi.

For Petitioners
in both CRPs : Mr.A.Muthukumar
For Respondents
in both CRPs : Mr.P.Valliappan

COMMON ORDER

These Civil Revision Petitions have been filed as against the fair and decreetal orders dated 05.08.2017 passed by the learned District Munsif, Paramathi, in I.A.Nos.702 & 703 of 2016 in I.A.No.512 of 2012 in

O.S.No.152 of 2012 respectively, thereby allowing the petitions filed by the respondent to file his objection in the Advocate Commissioner's report and for re-issuance of warrant to the Advocate Commissioner to revisit the property.

2. In both the Civil Revision Petitions, the petitioner is the plaintiff and the respondent is the defendant in the suit filed for easement of right by grant and also for injunction. While pending the suit, the petitioner filed petitions for interim injunction and also for appointment of Advocate Commissioner. The appointment for Advocate Commissioner application was allowed and the Advocate Commissioner inspected the suit property and filed his report along with rough sketch. After considering the Advocate Commissioner's report as well as the rough sketch filed along with the report, the trial Court allowed the injunction application.

3. After the period of four years and three months, while P.W.1 was in the box for cross-examination, the respondent filed petition seeking permission to file objections to the commissioner's report and also re-

issuance of warrant to the advocate commissioner for reinvestigation of the suit property. Both the petitions were allowed by the Court below and aggrieved by the same the present civil revision petitions.

4. The learned counsel appearing for the petitioner would submit that after the period of four years and three months, when P.W.1 was in the box for cross-examination, the respondent filed these petitions. After considering the Advocate commissioner's report and also rough sketch, which were marked as Ex.C.1 and Ex.C.2, the Court below granted injunction. Thereafter, the matter was under trial and P.W.1 was examined in chief and thereafter posted for cross-examination of P.W.1. After getting adjournment on eight occasions, the respondent filed these petitions seeking permission to file objection to the Advocate Commissioner's report as well as re-issuance of warrant to the Advocate Commissioner.

4.1. He further submitted that the reason stated by the respondent for re-issuance of the Advocate Commissioner's warrant is that the respondent engaged new counsel and the earlier counsel took up the suit for

trial without looking into the document as well as the Commissioner's report. While the respondent and the new counsel read the papers and came to understand that there are discrepancies in the Advocate Commissioner's report. He further submitted that it is nothing but dilatory tactics to prolong the trial. Therefore, he prayed for set aside the orders passed by the Court below.

5. Per contra, the learned counsel appearing for the respondent would submit that the respondent did not file any objections to the Advocate Commissioner's report. The earlier counsel on record failed to note down the discrepancies found in the Advocate Commissioner's report. He further pointed out that the Advocate Commissioner's report is not specific about the measurement in respect of the cart track. Further the petitioner sought for easementary right by grant and as such the Advocate Commissioner should have specific about the measurement shown in the Advocate report. Without the help of the surveyor, he simply measured the property and filed his report along with the rough sketch. Therefore, there is necessary for re-issuance of warrant to the Advocate Commissioner to revisit the suit

property with the help of surveyor.

6. Heard Mr.A.Muthukumar, learned counsel appearing for the petitioner and Mr.P.Nalliappan, learned counsel appearing for the respondent.

7. The petitioner filed suit for easementary right and injunction in respect of the cart track. While pending the suit, the petitioner filed petition for interim injunction and also for appointment of Advocate Commissioner. The Court below appointed the Advocate Commissioner and the Advocate Commissioner visited the property and filed his report. The Advocate Commissioner's report as well as the rough sketch were marked as Ex.C.1 and Ex.C.2. On the basis of the Advocate Commissioner's report and plan, the Court below granted interim injunction in I.A.No.511 of 2012 by the fair and decreetal order dated 12.09.2012. In fact, the Court below referred the Advocate Commissioner's report as well as the plan and passed order in referring Ex.C.1 and Ex.C.2 shall form the part of the order of injunction. When the matter was under trial, the petitioner was examined as P.W.1.

While he was in box for cross-examination, the respondent filed petition seeking permission to file his objection for the Advocate Commissioner's report as well as the re-issuance of warrant for the Advocate Commissioner to revisit the property to measure the suit property with the help of the surveyor.

8. On perusal of the affidavit filed in support of the petition revealed that the earlier counsel on record who appeared on behalf of the respondent failed to go through the papers and failed to file objection on the Advocate Commissioner's report. After engaging the new counsel on record, the respondent found some discrepancies in the Advocate Commissioner's report. Further the respondent did not file any objection to the Advocate Commissioner's report at the time of seeking permission to file objection along with the petition. Therefore, the Court below rightly allowed the petition in I.A.No.702 of 2016, thereby permitting the respondent to file his objection on the Advocate Commissioner's report and this Court finds no illegality or infirmity in the order passed by the Court below.

9. Insofar as the petition filed for re-issuance of warrant, the

Court below appointed another Advocate as Advocate Commissioner to inspect the suit property. In fact the Advocate Commissioner's report as well as the rough sketch already form part of the fair and decreetal order in I.A.No.511 of 2012 dated 12.09.2012. It seems that the respondent did not challenge the injunction order dated 12.09.2012 passed in I.A.No.511 of 2012 in O.S.No.152 of 2012. Therefore, the order passed by the Court below in I.A.No.703 of 2016 is perverse and liable to be set aside.

10. Accordingly, the Civil Revision Petition in C.R.P.No.3301 of 2017 stands dismissed and the Civil Revision Petition in C.R.P.No.3302 of 2017 stands allowed. The order dated 05.08.2017 passed by the learned District Munsif, Paramathi in I.A.No.703 of 2016 in I.A.No.512 of 2012 in O.S.No.152 of 2012 is hereby set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

01.03.2021

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
rts

G.K.ILANTHIRAIYAN, J.

rts

To

1. The District Munsif,
Paramathi.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



C.R.P.(PD) Nos.3301 & 3302 of 2017
and C.M.P.No.15420 of 2017

WEB COPY

01.03.2021