



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD) No.798 of 2020

P.Muthu ... Petitioner/Petitioner/Defendant

Vs.

D.Rajakumari ... Respondent/Respondent/Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 20.02.2020 passed in IA.No.23/2018 in OS.No.1166/2015 on the file of the Principal District Munsif Court, Tiruchirappalli.

For Petitioner : Mr.G.S.Asok Adhityan

For Respondent : No appearance

ORDER

The defendant who is aggrieved by the dismissal of his application seeking appointment of an Advocate Commissioner to note down the physical features of the suit property with the help of qualified surveyor and submit report after scrapping the earlier Advocate Commissioner's report, has filed this Civil Revision Petition.

2. The facts in brief are as follows.

The respondent / plaintiff had filed a suit in OS.No.1166/2015 on the file of the Principal District Munsif, Tiruchirappalli for an injunction and an alternative mandatory injunction to demarcate the plaintiff's property and recover the encroached portion. Pending the suit, an Advocate Commissioner had been appointed to measure and inspect the suit property with the help of revenue records as well as the documents furnished on both sides. The Advocate Commissioner was directed to give due notice to both sides.



3. The grievance of the revision petitioner is that the Advocate Commissioner has not followed the dicta given in his warrant and the Commissioner has proceeded to merely note down the physical features of the plaintiff's property. The Commissioner who has acknowledged the memo of instructions that had been given by the counsels on both sides, has not complied with any one of the said instructions. One of the instructions that has been given is that the Advocate Commissioner should note down the four boundaries of the suit property, measure each of the survey numbers contained in the suit schedule property and start the measurement from the military survey stone. None of the instructions had been followed by the Commissioner. A detailed objection had also been submitted by the petitioner herein.

4. Considering the incomplete report filed by the earlier Commissioner, the petitioner / defendant had come forward with an application to scrap the earlier report submitted in IA.No.780/2015 and to appoint a fresh Commissioner to inspect both the properties of the petitioner as well as the respondent with the assistance of a qualified surveyor and to note down the physical features and submit a report and plan drawn to scale. This application has been dismissed by the learned Principal District Munsif, Tiruchirappalli. Challenging the same, the revision petitioner is before this Court.

5. Heard the learned counsel appearing for the revision petitioner. None appeared on the side of the respondent, though she has been served.

6. A perusal of the warrant issued to the earlier Advocate Commissioner indicates that the Advocate Commissioner had been directed to inspect the properties with the help of revenue records and with the help of documents supplied by both sides. A perusal of the report filed does not indicate that the Advocate Commissioner has relied on the revenue records or the documents. In fact, the report does not even make a mention of the documents that had been provided to the Advocate Commissioner. Therefore, it is clear that the earlier Advocate Commissioner has not executed the warrant as directed. The learned Principal District Munsif, Tiruchirappalli has not taken into consideration this glaring omission. Therefore, this Court holds that the earlier Commissioner's report has to be scrapped and a new Commissioner shall be appointed to note down the physical features of both the plaintiff's and defendant's property, which alone would highlight and show if there is any encroachment and measure the same and submit a report with a plan. The Advocate Commissioner shall take the assistance of a qualified surveyor to assist him in the above.

7. The Civil Revision Petition is allowed accordingly. No costs. The order dated 20.02.2020 passed in IA.No.23/2018 in



OS.No.1166/2015 on the file of the Principal District Munsif Court, Tiruchirappalli is hereby set aside.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

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To:-

The Principal District Munsif,
Tiruchirappalli.

+1 CC to M/s.G.S.ASOK ADHITHYAN, Advocate (SR-40112[F] dated 23/12/2021)

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