



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD)No.1153 of 2020

and

C.M.P (MD) No.7359 of 2020

WEB COPY

1.Sebastin	
2.Jeyasingh	
3.Ramakrishnan	
4.Chithrapathi Jeyaveeran	... Petitioners/Petitioners/ Defendants 1 to 4
Vs	
1.Rajapandi Nadar	...1 st Respondent/1 st Respondent/ Plaintiff
2.Palaiah @ Muthaiah Papanasam	
3.Vickramasingapuram Second Grade Municipality, Rep by its Commissioner	
4.Ramkumar	... Respondents 2 to 4/ Respondents 2 to 4/ Defendants 5 to 7

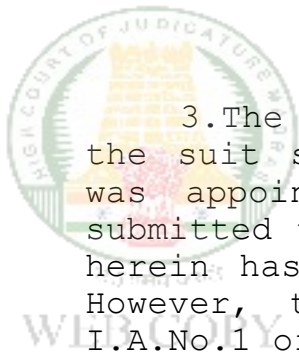
PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 30.06.2020 passed in I.A.No.1 of 2019 in O.S.No.94 of 2012 on the file of the Additional District Munsif Court, Ambasamudram and allow the present civil revision petition.

For Petitioners	: Mr.S.S.Thesigan
For R1	: Mr.Pon Karthikeyan

ORDER

Aggrieved by the dismissal of the application seeking re-issue of commission warrant to the Advocate Commissioner to visit the suit property along with the qualified Surveyor to measure the property described in O.S.No.20 of 2017 and O.S.No.217 of 2018 as well as the suit scheduled property, to note down the physical features and submit the report and plan, the petitioners, who are defendants 1 to 4 in the suit in O.S.No.94 of 2012, are before this Court.

2.The impugned application in I.A.No.1 of 2019 was filed by the petitioners in the suit O.S.No.94 of 2012 which has been filed by the first respondent herein for a mandatory injunction against the defendants 1 and 2 to demolish the north-south wall put up by the defendants 1 and 2, for a mandatory injunction to demolish the newly constructed house, wall, windows etc.,. and also for a mandatory injunction directing the fifth defendant to remove the pipeline that has been put up. Pending the suit, an Advocate Commissioner was appointed ex parte and had gone and inspected the property and submitted the report.



3.The main grievance of the petitioners is with reference to the suit second item of the property. The Advocate Commissioner was appointed *ex parte* and he has inspected the property and submitted the detailed report along with the plan. The petitioners herein has not submitted any objection to the said application. However, they have come forward with the impugned petition in I.A.No.1 of 2019 for re-issue of commission warrant.

4.In the affidavit filed in support of the said petition, the petitioners would submit that the earlier commission was an *ex parte* commission about which they had no information and responsible people were not present when the inspection was underway. Further, the commissioner has not measured the properties of the first petitioner/ first defendant. The petitioners would submit that there is no property as described in the second item on site. Further the petitioners herein have also filed two suits in O.S.No.20 of 2017 and O.S.No.217 of 2018 in respect of the second item of suit property. In O.S.No.20 of 2017, the petitioners have filed I.A.No.144 of 2017 for appointing an Advocate Commissioner. This application was dismissed on 16.06.2017, against which. the petitioners had filed CMA No.3 of 2017, which was also dismissed.

5.The first respondent/plaintiff had resisted the above application *inter alia* contending that the petitioners herein have filed two suits in respect of the very same property. Therefore, the plaintiff would seek to have the application dismissed.

6.The learned Additional District Munsif, Ambasamudram, after hearing the parties was pleased to dismiss the above application for appointing an Advocate Commissioner and it is challenging this order that the defendants 1 to 4 are before this Court

7.Heard the learned counsel on either side and perused the records.

8.The main objection raised by the learned counsel for the revision petitioners was that the commissioner's report which has been filed in the suit was styled as an interim report and therefore, the petitioners were genuinely under the impression that a final report would be filed and therefore, they had not file their objection to the said petition. This application has been moved when the defendants side evidence has started and when they realised that the interim report is itself the final report.

9.A perusal of the records would show that the Commissioner appointed earlier had filed a very detailed report along with the plan, in which, the Commissioner has set out the physical features on site. The revision petitioners herein have not filed an objection to the said report though they would contend that it is an *ex parte* commission and the Commissioner has only filed an interim



report. Therefore, the petitioners have accepted the report originally filed. Further, it is brought to the notice of this Court that after filing of the report, the revision petitioners have filed two suits in O.S.No. 20 of 2017 and O.S.No.217 of 2018, both in respect of the very same path way. I.A.No.144 of 2017 has been filed in the suit in O.S.No.20 of 2017 for appointment of an Advocate Commissioner, which was rejected and the appeal filed against the same, has also been rejected. In the above circumstances, the present application is nothing, but an abuse of process of the Court. It is well open to the petitioners to cross examine the Advocate Commissioner and there is no necessity for re-issue of the commission warrant. The petitioners have not been able to point out as to how they are aggrieved by the appointment of Advocate Commissioner.

10.The learned counsel for the petitioner has submitted a judgment reported in **1999 (1) MLJ 60** in the case of **Kathiresan and another Vs Shanmugha Sundaram**, where the learned Judge has held that when the appointment of the Commissioner was *ex parte* and the Commissioner does not give prior notice to all parties before undertaking the inspection work, the whole procedure is vitiated and therefore, there should be a reissue.

11.I would respectfully submit that I am not in agreement with the observation of the learned Judge, since an *ex parte* commission is mostly resorted to when the physical features and other details have to be urgently noted without alerting the other side. A prior notice would alert the defendant into altering or putting aside any work that has been undertaken and in respect of which, mandatory injunction is sought for.

12.In the instant case, though the Advocate Commissioner's report is styled as a interim report, however, the report has covered the entire details. Therefore, the observation in the above judgement cannot be used as an yardstick for all *ex parte* Commissions. Therefore, I do not find any reason to interfere with the order of the lower Court.

13.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

cp



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To:-

The Additional District Munsif,
Ambasamudram

C.R.P (MD) No.1153 of 2020

and

C.M.P (MD) No.7359 of 2020

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nsn (CO)

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