



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.R.P. (MD) (PD) No.1021 of 2014

and

M.P (MD) .No.1 of 2014

R.Kandasamy ... Petitioner/Respondent/Plaintiff

-vs-

A.Sahadevan ...Respondent/ Petitioner/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 10.12.2013 made in I.A.No.1121 of 2013 in O.S.No.202 of 2010 on the file of the District Munsif, Srivaikundam and allow the above Civil Revision Petition.

For Petitioner : Mr.P.Thiagarajan
For Respondent : Mr.A.Thiruvadikumar

O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 10.12.2013 made in I.A.No.1121 of 2013 in O.S.No.202 of 2010 on the file of the District Munsif, Srivaikundam.

2.The facts of the case, in a nutshell, are that the petitioner is the plaintiff and the respondent is the defendant. The suit was filed for declaration and permanent injunction. In the suit, the respondent has filed IA.No.1121 of 2013 seeking for re-issue the warrant to the Advocate Commissioner along with the help of the surveyor. The said application was allowed by the impugned order. Hence, the present revision.

3.The learned counsel for the petitioner would submit that the suit was filed to restrain the respondent from encroaching upon the petitioner's suit schedule property and the earlier Advocate Commissioner's report and plan are very much sufficient to decide the facts whether any encroachment by the respondent in the petitioner's property and as such, the re-issue of Commissioner Warrant does not arise and the Court below ought to have seen that the respondent kept quiet for more than two years from the earlier



reports were filed and only with an intention to drag on the suit proceedings and to harass the petitioner, the present petition has been filed. The earlier Advocate Commissioner ceased the Advocate profession and as such, the re-issue of warrant to the new Advocate Commissioner is nothing but appointing another Advocate as Commissioner and he has to re-do the whole thing which the earlier commissioner did and moreover there will be every chances of controversies in the report file by two different Advocate Commissioners and that without scraping the earlier Advocate Commissioner's report, the new Advocate Commissioner cannot be appointed to file a fresh report and plan and the same is contrary to law and facts of the case. Hence, he prays to set aside the impugned order passed by the Court below.

4.The learned counsel for the respondent would submit that there are variations in the earlier Commissioner's report and measurements and therefore, by re-inspection of the suit property and the eastern property, would give final conclusion of the suit proceedings. After hearing the parties, the Court below has rightly allowed by the impugned order and hence, this civil revision petition is liable to be dismissed.

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 order to adjudicate the boundary disputes properly, the Court below has rightly allowed the petition, by the impugned order, which warrants no interference by this Court. In order to bring a quietus to the proceedings, the Court below is directed to scrap the earlier Commissioner's report, filed at the first instance, forthwith. With these directions, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp/msa



To

The District Munsif,
Srivaikundam

+1cc to P. Thiyagarajan SR.No.23353 dated 20.07.2021

C.R.P. (MD) (PD) No.1021 of 2014

and

M.P (MD) .No.1 of 2014

19.07.2021

MJ (CO)

LR (30.07.2021) 3P 3C