



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 20.9.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

WEB COPY

C.R.P.(PD) (MD) No.1767 of 2014

and

M.P.No.1 of 2014

1. S.Dhanabalan (Died)
2. D.Srinivasan
(P2 is brought on record as LR of the
deceased sole petitioner as per order
dated 27.4.2019 in C.M.P.No.2724/2019) ...Petitioners

vs.

1. R.Subbaiah
2. Dr.S.Sabarirajan ...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 27.6.2014 made in I.A.No.895 of 2013 in I.A.No.577 of 2011 in O.S.No.62 of 2011 on the file of the District Munsif Court, Sivagangai.

For Petitioners : Mr.Vidya Maheswaran

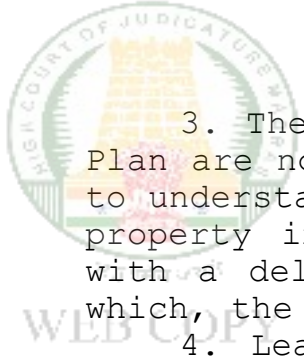
For Respondents : Mr.S.Madhavan

ORDER

The revision has been filed against the rejection of the petition seeking to appoint a fresh Advocate Commissioner to inspect the suit property and to measure and fix the encroachments allegedly made by the respondents in the suit property.

2. Brief facts of the case are as under:-

The revision petitioner is the plaintiff. Earlier, on his Application No.577 of 2011, an Advocate Commissioner was appointed and on 16.4.2011, he had inspected the suit schedule property in the presence of the counsel for the parties and the Village Administrative Officer and the Town Surveyor and he had filed the Report before the court on 25.4.2011. The petitioner/plaintiff had filed an objection to the Report of the Commissioner on 30.5.2011. The respondent/defendant had also filed objection to the Advocate Commissioner's Report on 1.6.2011. Whiles, on 13.6.2013, the petitioner/plaintiff had filed an Application under Order 26 Rule 9 read with Section 151 CPC to set aside the Commissioner's Report and to appoint a fresh Advocate Commissioner to inspect the suit property.



3. The Trial Court, finding that the Commissioner's Report and Plan are not conclusive proof and it would be helpful to the court to understand the physical features and measurements existing in the property in dispute and finding that the petition had been filed with a delay of two years, had dismissed the Application against which, the present revision has been filed.

4. Learned counsel for the petitioners would submit that the Commissioner was appointed to note down the measurements in T.S.No.31 and T.S.No.26, but, he has not stated in his Report any details of the extent of encroachments and the Commissioner has not measured the suit property with the help of title documents of both the parties and fixed the measurement of the compound wall which is the matter in dispute. He would also submit that the Commissioner also failed to note that there is a manhole dug by the respondent and the said hole falls within the Municipal Streets and that basement wall also falls within the property of the petitioner and further, after properly measuring the extent of 'EF' line measuring 70 feet will come beyond the compound wall to its further north and it was also omitted to be mentioned by the Commissioner and the Commissioner has also acted in favour of the respondents and thereby the Report has to be scrapped and new Commissioner has to be appointed.

5. Per contra, the learned counsel for the respondents would submit that the inspection was conducted in the presence of the counsel for both the parties and that the Village Administrative Officer and the Local Town Surveyor were present the learned counsels, who were present at the time of inspection, did not make any objections to the measurements taken by the Village Administrative Officer and the Town Surveyor and only in order to delay the proceedings, the present petition has been filed after two years. He would also submit that the Trial Court, rightly finding that the petitioner had been remained silent for more than two years and also finding that the Commissioner's Plan and Report are not conclusive, had dismissed the Application. The revision petitioners have not made out a case for scrapping the Report of the Advocate Commissioner and therefore, the revision may be dismissed, he would submit.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. Pursuant to the petition filed by the revision petitioner, the Commissioner was appointed and the Commissioner had conducted the inspection and filed the Report on 25.4.2011. Though the petitioner had filed objection to the Commissioner's Report on 30.5.2011, he had filed petition the seeking to scrap the Report of the Advocate Commissioner only 13.6.2013 after a delay of two years when the matter was ripe for trial.

8. The Trial Court, finding that the Commissioner's Report and Application are not conclusive proof and that the petitioner had remained silent for more than two years and filed a petition to scrap the commissioner's report belatedly and holding that the

parties have to rely on their own documents, had dismissed the Application.

9. Having slept over for about two years without any diligence, the petitioners cannot expect the court to come to their rescue by stretching its powers and set the clock back. This court does not find any infirmity in the order passed by the court below. The civil revision petition is, accordingly, dismissed. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

District Munsif,
Sivagangai.

+1CC to G.Vidhya Maheswaran, Advocate(SR.No.29708)

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MGJ(28.09.2021) 3P 3C