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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(MD).Nos.823 to 826 of 2014 and
M.P(MD).No.1 of 2014 in all C.R.Ps

Jeyapaul .. Petitioner in all C.R.Ps. / defendant

Vs.

Ronickam Ammal .. Respondent in CRP(MD).Nos.823 and 824 of 2014

1.Arockiam
2.Charles
3.Elizebeth
4.Rajan
5.Kanisudhan .. Respondents in CRP(MD).Nos.825 and 826 of 2014

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.Nos.1025, 1111 of 2013 in O.S.No.62 of 2011 and I.A.Nos.1109 and 1024 of 2013 in O.S.No.61 of 2011, on the file of learned District Munsif, Sathankulam, dated 10.01.2014.

For petitioner in all CRPs : Mr.M.Murugan for Mr.R.Balakrishnan
For respondents in CRP(MD).Nos.823 and 825 of 2014 : Mr. S.R. Anbarasu
For R1 in CRP(MD).826 of 2014- No Appearance

COMMON ORDER

These four Civil Revision Petitions arise out of two suits between the same parties relating to two different properties.

2. Both the suits viz., O.S.Nos.61 and 62 of 2011 were filed seeking declaration of the title of the plaintiffs and for permanent injunction restraining the defendants from interfering with the plaintiff's possession. Pending suits, an Advocate Commissioner was appointed and he has also filed a report and plan in both the suits after taking the help of a qualified Surveyor. The sole defendant had filed his objections to the Commissioner's report. Apart from filing objections, the defendant had filed I.A.Nos.1024 and 1025 of 2013 seeking to appoint another Commissioner to measure the property again with reference to the boundaries found in his documents of purchase or to re-issue the warrant to the same Commissioner to measure the property as per the boundaries found in his documents of purchase. An objection was taken to the maintainability of the applications on the ground that the applications for appointment of second commissioner or for

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reissue of the warrant are not maintainable in the absence of an application to scrap or strike off the earlier report.

3. Upon such objection being taken and after orders were reserved, the petitioner came out with two more applications in I.A.Nos. 1109 and 1111 of 2013 to scrap the report filed by the Commissioner in both the suits. All the applications were heard together. The trial Court dismissed the applications concluding that the defendant has not made out a case for scrapping the report or for appointing a Second Commissioner or for reissue of the warrant. Aggrieved, the defendant has come out with these four revisions against the orders in I.A.Nos. 1024 , 1025, 1109 and 1111 of 2011 viz., the applications for reissue of warrant and the applications for scrapping of the report.

4. I have heard Mr.M. Murugan, learned counsel appearing for the petitioner and Mr. S.R. Anbarasan, learned counsel appearing for the respondents.

5. The learned counsel appearing for the petitioner vehemently contended that the trial Court was not right in dismissing the applications without adverting to the reasons assigned in the affidavit filed in support of the applications. He would also submit that objections to the Commissioner's report filed by the petitioner were not considered by the trial Court.

6. Per contra, learned counsel appearing for the respondents would submit that the report of the Commissioner cannot be scrapped for the mere asking. Before the report could be scrapped, it should be proved that the report is either wrong or the Commissioner had exceeded the scope of the warrant. In the absence of any finding to the effect that the Commissioner had exceeded the scope of the warrant, the trial Court was right in dismissing the applications for scrapping. Once the applications for scrapping the report are dismissed, the application for re-issue of the warrant would have to be dismissed.

7. I have considered the submission of the learned counsel appearing on either side.

8. The suit is one for declaration and injunction. There is a dispute regarding the identity of the property. The plaintiff claims certain extent of property within the certain boundaries. The Commissioner who was appointed to identify the property observed that the boundaries set out were admitted by the parties. Of course, it is now claimed that there was no such admission by petitioner / defendant. Apart from denying the claim of the Commissioner that the boundaries set out in the plaint were admitted, the petitioner / defendant would also submit that the measurements will have to be taken as per the boundaries recitals found in the documents.

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9. The Advocate Commissioner had visited the property and had filed a report, it is open to the parties to demonstrate that the Commissioner's report is either wrong or the Commissioner had exceeded the scope of warrant. This can be done by examining the Commissioner with reference to his report and other documents. Such exercise yet to be carried out and in the absence of the same, it can be concluded that the Commissioner's Report which is on record, is wrong or that the Commissioner has exceeded the scope of the warrant.

10. Unless the Court reaches such conclusion after evidence is recorded, the application for second Commissioner could not be entertained. I therefore, do not find any illegality or irregularity in orders passed by the trial Court, dismissing the applications.

11. It is however, made clear that it will be open to the petitioner / defendant to demonstrate that the report of the Commissioner is wrong and seek reissue of the warrant if the Commissioner's report is wrong, after the evidence is recorded.

12. These Civil Revision Petitions are dismissed with the above liberty. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

To

The learned District Munsif, Sathankulam.

C.R.P(MD).Nos.823 to 826 of 2014 and
M.P(MD).No.1 of 2014 in all C.R.Ps
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MJ(CO)
KB(23.04.2021) 3P 2C

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