



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.06.2021

Delivered on : 12.08.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.R.P.(PD)(MD)No.1803 of 2017

and

C.M.P.(MD)No.9605 of 2017

Alagarsamy

... Petitioner

Vs.

Suba.Karmegam

... Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order, dated 04.07.2017, made in I.A.No.268 of 2014, in O.S.No.21 of 2012 on the file of the Sub Court, Paramakudi, in allowing the application for reissue of Commissioner Warrant and to allow the Civil Revision Petition.

For Petitioner : Mr.D.Senthil

For Respondent : Ms.Devi Saravana Priya

ORDER

This Civil Revision Petition is filed against the order, dated 04.07.2017, made in I.A.No.268 of 2014, in O.S.No.21 of 2012 on the file of the Sub Court, Paramakudi.

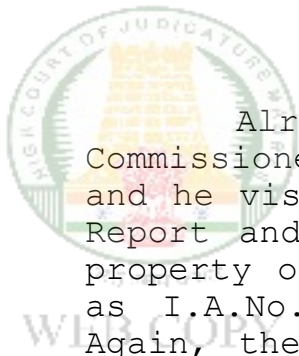
2.The revision petitioner herein is the plaintiff and the respondent herein is the defendant.

3.Brief substance of the petition in I.A.No.268 of 2014 is as follows:

The plaintiff has filed a suit for declaration on the basis of a sale deed, dated 29.09.1999. The Court Commissioner visited the suit property on 13.03.2012. The measurements of the suit property and the adjacent property that belong to the petitioner were mentioned in the report. But, the measurements regarding the plaintiff's property that lies on the Eastern side of the suit property was not mentioned. Whether the suit property is a portion of the property mentioned in the sale deed has to be decided in the case and the measurements of the plaintiff's property also is necessary to decide the issue. To point out these particulars, re-issuance of the Commissioner Warrant is necessary for the re-visit of the Commission to measure the property on the basis of the sale deed, dated 29.09.1999.

4.Brief substance of the counter in I.A.No.268 of 2014 is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



Already the suit property was already visited by the Commissioner. In I.A.No.91 of 2012, a Commissioner was appointed and he visited the suit property and he has filed the Commissioner Report and Plan. The petitioner filed a petition to measure the property on the basis of his documents. That petition was numbered as I.A.No.89 of 2013. The Commissioner warrant was re-issued. Again, the Commissioner visited the property on 02.12.2013 and he filed a second report and sketch. No objection was raised by the petitioner against the report and sketch. As the property was measured twice on the basis of the Revenue Records, there is no necessity to measure the property again and the petition is to be dismissed.

5.After hearing both sides, the trial Court allowed the petition. Against the same, the revision petitioner has preferred this Civil Revision Petition.

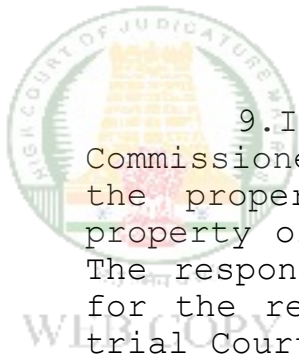
6.On the side of the revision petitioner, it is stated that the respondent failed to consider that the petitioner has filed a petition in I.A.No.91 of 2012 and the report was filed on 16.04.2012. Again, the respondent filed a petition in I.A.No.89 of 2013. That petition was also allowed and a second report and plan was filed on 02.12.2013. There is no necessity for the visit of the Commissioner for the third time. No evidence was adduced by the respondent to prove the necessity for the further issuance of warrant. The respondent has failed to file any objection against the earlier reports. Only to drag on the proceedings, the respondent has filed this petition. Without filing an objection petition and without scraping the earlier Commissioner Reports, the respondent / defendant is not entitled to file a petition. In this regard, the following judgments are cited by the learned counsel for the revision petitioner.

1.2017 (1) CTC-65 [**Ramasamy and others Vs. S.Palanisamy**]

2.2016 (6) CTC-66 [**Semitta Kounder and another Vs. Murugesan**]

7.On the side of the respondent, it is stated that since the East-West measurement of the property was not mentioned in the Sketch, instead of filing an objection petition, the respondent has filed a petition for re-issuance of the warrant. No prejudice will be caused to the other side and prayed the revision petition to be dismissed.

8.The first Plan filed by the Commissioner in I.A.No.91 of 2012, and the second plan in I.A.No.89 of 2013 were perused. It is seen that the plaintiff and the defendant are having properties adjoining the suit property the measurement of both their properties is necessary to decide the main issue that involved in the case.



9. In the above circumstances, the re-issuance of the Commissioner warrant is necessary. The Commissioner has to measure the property of the revision petitioner / plaintiff and the property of the respondent / defendant and also the suit property. The respondent / defendant is also liable to bear the remuneration for the re-visit of Commissioner as fixed by the trial Court. The trial Court has imposed a cost of Rs.1,000/- for the delay, which is also reasonable.

10. For the above reasons, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized 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

1. The Sub Court,
Paramakudi.

2. The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-26108[F] dated 12/08/2021)

+1 CC to M/s.D.SENTHIL, Advocate (SR-26323[F] dated 16/08/2021)

C.R.P (PD) (MD) No.1803 of 2017
12.08.2021

ES (CO)
KB (19.08.2021) 3P 6C