



C.R.P. (PD) No.1256 of 2020
and CMP No.6818 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (PD) No.1256 of 2020
and CMP No.6818 of 2020

1. Allimuthu

* (Rep. By Power Agent Manoharan)

No.1 Eastern Street,
Pakkam Village, Thiruvallur Taluk,
Thiruvallur District.

2. P.Manohara

.. Petitioners

* Cause title accepted vide court order dated 4/3/2020
made in CMP Nos. 5282 & 5284 of 2020
in CRP SR No.7873 of 2020

Vs.

N.Krishnamoorthy @ Kesavan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order passed in IA No.01 of 2009 in OS No.59 of 2014 dated 20.11.2019 on the file of the Principal District Munsif, Tiruvallur.



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For Petitioners : Mr.Deeraj Thiyagu
for Mr.R.Karthikeyan

For Respondent : Mr.D.Vishnuvardhan
for Mr.A.E.Ravi Chandran

ORDER

Challenge is to the order of the Trial Court dismissing the Application in IA No.1 of 2019 filed by the petitioners, who are defendants in OS No.59 of 2014, seeking to re-issue the warrant to the Advocate Commissioner appointed in IA No.2836 of 2014 with direction to him to measure the property with reference to FMB Sketch and the Sale Deeds dated 30.08.1990 and 04.06.1986 with the help of a Taluk Surveyor.

2. The suit is one for declaration of title and permanent injunction launched by the respondent. The respondent claims title to 1.46 acres of lands in Survey No.652/1 claiming that he has purchased the same under a Sale Deed dated 30.08.1990. It is conceded by the plaintiff that the defendant has purchased 50 cents of land in Survey No.652/1 which is



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situate on the west of the property purchased by the plaintiff. Since the dispute was with reference to the location of the property, the plaintiff filed an application in IA No.2836 of 2014 seeking appointment of Commissioner to measure the property with the help of a Surveyor and with reference to the Sale Deeds dated 30.08.1990 and 04.06.1986. The Commissioner filed a Report along with the Letter and Plan prepared by the Surveyor. This Report was filed in the year 2017.

3. A Revision was filed before this Court challenging the order made in IA No.2836 of 2014 appointing a Commissioner, the said Revision was dismissed by this Court. Thereafter the petitioners filed IA No.444 of 2018, seeking appointment of an Advocate Commissioner to resurvey the land and mark the exact boundaries in accordance with FMB Sketch. That application was dismissed by the Trial Court observing that since the Report of the Commissioner is already on record, a new Commissioner cannot be appointed unless the Report is scrapped. The order in IA No.444 of 2018 has become final. Thereafter the petitioners/defendants have come up with the present application seeking re-issuance of the warrant of the same



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Commissioner.

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4. The Trial Court has dismissed the application observing that it is for the petitioners to demonstrate that the Report of the Commissioner is flawed by letting in evidence or examining the commissioner. They cannot seek reissue of the warrant to the same Commissioner without demonstrating that the Report of the Commissioner is incorrect or that the Commissioner has exceeded the scope of the warrant.

5. Mr.Deeraj Thiyagu, learned counsel appearing for the petitioners would vehemently contend that the Trial Court was not right in dismissing the application, more so, when the Commissioner has not followed the directions of the Trial Court while measuring the property. The learned counsel would also contend that there has been some subdivisions of the property, after the institution of the suit and hence it is all the more necessary that the Commissioner is directed to revisit the property.

6. I am unable to accept the submissions of the learned counsel for the



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petitioners. Whether it is appointment of second Advocate Commissioner or reissue of the warrant to the same Advocate Commissioner, it can be done only after the Court comes to a conclusion that the Report is flawed and a re-inspection is required. The Court can come to a conclusion that the Report is wrong or it is in-correct, only after evidence is let in and the Court examines the evidence on record along with the Report of the Commissioner. Re-issuance of the warrant of commission cannot be automatic. The learned counsel would take pains to point out that the Commissioner has not followed the directions contained in the order of the Court made in IA No.2836 of 2014. If the Commissioner has not followed the directions issued by the Court as defendants in the suit, the petitioners can definitely take advantage of it to get the suit dismissed.

7. The attempt of the petitioners to have the warrant reissued to the same Commissioner and to have him revisit the property appears to be an attempt to prolong the proceedings. It will be open to the petitioners to demonstrate that the Report is wrong or that the Commissioner has not followed the directions issued by the Court by letting in appropriate evidence



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and if the Court comes to a conclusion with the Report is wrong or that it requires the further Report from the Commissioner, it is open to the Court to re-issue the warrant to the Commissioner. The application for re-issuance of the warrant at this stage, in my opinion, is premature.

8. Hence I do not see any reason to interfere with the order of the Trial Court dismissing the application, the Civil Revision Petition fails and it is **dismissed**. It is made clear that it will be open to the petitioners to demonstrate with the Report is flawed and if the Court finds that the report is flawed, it will be open to the Court to reissue the warrant or even appoint a new Commissioner to identify the property. The Trial Court will also consider the objections filed while deciding on the correctness of the Report. Consequently, the connected miscellaneous petition is closed. No costs.

jv

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Index: Yes/No

Internet: Yes/No

Speaking order



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To

1. The Principal District Munsif,
Tiruvallur.

2. The Section Officer,
V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

jv

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