



C.R.P(PD)No.751 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

C.R.P(PD)No.751 of 2022
and C.M.P.No.3737 of 2022

1.Prema
W/o.Raja @ Devarajee,

2.Mani,
S/o.Periasamy,

... Petitioners

Vs.

Krishnan,
S/o.Rangasamy Chettiyar

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, prayed to set aside the Fair and decreetal order dated 12.11.2021 passed in I.A. No.2 of 2021 in I.A.No.291 of 2017 in O.S.No.94 of 2017 on the file of the Additional District Munsif Court, Nammakkal.

For Petitioners : Mr.S.Saravanan

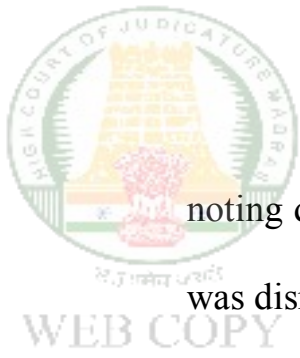


ORDER

1.1 The Revision petitioners herein are the plaintiffs. They laid a suit in O.S.No.94 of 2017 before the Additional District Munsif Court, Namakkal for declaration to their title to the suit property and for certain allied reliefs of injunction. The defendant is stated to be the owner of the property on the immediate west, and the allegation is that he is trying to put up some construction in the suit property belonged to the revision petitioners / plaintiffs.

1.2 Before the trial Court, the revision petitioners have moved for appointing an Advocate Commissioner for local inspection. The Commissioner has visited the property, took the assistance of surveyor and filed his report. This Court could gather from the order now impugned before this Court in this Revision that the defendant has filed objection to the said Commissioner's report and requires that the same be impeached.

1.3 In the meantime, the plaintiff would now take out two applications, one to scrap the Commissioner's report in I.A.No.1 of 2021 now on record, and I.A.No.2 of 2021 for reissuing the warrant to the same Commissioner for



noting down the points which he was originally required to note down. This was dismissed.

2. The learned counsel for the Revision Petitioners submitted that it is not only the defendant even the plaintiffs require the scraping of the Commissioner's report vide I.A.No.1 of 2021, and therefore, warrant may have to be re-issued to the same Commissioner.

3. A Commissioner is an officer of the Court, and his report is part of the record, without any need for formal proof, and it can be impeached only in a manner known to law. Therefore, till the 1st Commissioner's report is impeached, it may not be appropriate for the Court to suspect the report filed by its own officer.

4.As indicated earlier, the defendant has filed his objections. So far as I.A.No.1 of 2021 which the plaintiffs have taken out for scraping the Commissioner's report is concerned, this Court is informed that consequent to the dismissal of the I.A.No.2 of 2021 even I.A.No.1 of 2021 was dismissed.



5.This Court understands that the objections have already been filed by the plaintiffs. Now, it is the duty of the Court to look into the objections filed by both the plaintiffs as well as the defendant and take a final call on the quality of the Commissioner's report. If the Commissioner's report lacks credibility or if it is considered by the trial Court that the same would not be useful to it for resolving the dispute before it, then necessarily another Commissioner may have to be appointed if only the Court considers that there is a need to appoint a Commissioner for ascertaining certain facts which could be obtained only on a local inspection. Thus, the present application in I.A.No.2 of 2021 can only be termed pre-mature, and the plaintiffs ought to have wait till the trial Court took a decision on the quality of the Commissioner's report now available on its record. Subject to the outcome of the finding of the trial Court on the same, not only the plaintiffs even the defendant may move the trial Court for appointing a fresh Commissioner. Even the trial Court has *suo motu* powers to appoint the Commissioner to ascertain the fact that it may require to ascertain. This Court therefore, does not consider any need for interfering with the conclusion arrived by the trial Court though it may substitute the reasoning of the trial Court with what are herein above stated.



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6.The Civil Revision Petition stands disposed of accordingly. The trial Court now requires to consider the objections raised against the present Commissioner's report. The plaintiff is given the liberty to file his objections to the Commissioner's report before the trial Court within ten days from the date of receipt of copy of this order, for the said purpose. Consequently, the connected C.M.P.No.3737 of 2022 is closed. No costs.

15.03.2022

Index : Yes / No Internet : Yes / No
Speaking / Non speaking order

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To
The Additional District Munsif Court,
Nammakkal.



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N.SESHASAYEE, J.,

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