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C.R.P.No.969 of 2020
and C.M.P.No.5280 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE **MRS.JUSTICE R. HEMALATHA**

C.R.P.No.969 of 2020
and
C.M.P.No.5280 of 2020

C.Somasundaram

... Petitioner

..Vs..

D.Santhi

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order dated 29.01.2020 in I.A.No.1 of 2019 in O.S.No.22 of 2018 on the file of the II Additional District Munsif Court, Erode.

For Petitioner : Mr.D.Lakshmipathy

For Respondent : Mr.S.Mukunth for

M/s.Sarvabhauman Associates

ORDER

The present Civil Revision Petition is filed against the fair and decreetal orders dated 29.01.2020 in I.A.No.1 of 2019 in O.S.No.22 of 2018 on the file of the learned II Additional District Munsif, Erode.



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2. The revision petitioner is the plaintiff in O.S.No.22 of 2018 on the file of the II Additional District Munsif Court, Erode. He filed the suit for a declaration of his title over the 'A' schedule property and for a mandatory injunction directing the defendant to remove the encroachment made in his property. He further sought for restraining the defendant and his men from interfering with his peaceful possession and enjoyment of the suit 'B' schedule property. The respondent / defendant filed her written statement and both the parties went for trial after settlement of issues. The respondent/defendant filed an application in I.A.No.47 of 2018 for appointment of an Advocate Commissioner for noting down the physical features of the suit property and also to measure the same with the help of a taluk surveyor. Accordingly, an Advocate Commissioner was appointed and he measured the land with the help of a taluk surveyor and filed his report along with the surveyor's plan on 03.03.2018. The learned Advocate Commissioner in his report had specifically stated that the respondent/defendant had not encroached upon the land of the plaintiff and that the entire extent of 2000 sq.ft. (plaintiff's property) is intact. Aggrieved over the Advocate Commissioner's report and plan, the present



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civil revision petitioner filed an application in I.A.No.1 of 2019 under Section 151 of the Code of Civil Procedure to scrap the report filed by the Advocate Commissioner.

3.The respondent/defendant filed a counter and after full contest, the learned trial court judge dismissed I.A.No.1 of 2019 on 29.01.2020 by observing that

"The above petitioner / plaintiff had filed a petition praying this court to appoint the commissioner to measure the suit property with the help of taluk surveyor and to note down the physical features and encroachment if any and to file a report along with plan and the above IA was numbered as IA No.47/2018 and was allowed by this court and based on the direction given by this court the above commissioner had measured the suit property with the help of qualified surveyor and had filed a detailed report.

On perusal of the commission report and plan it comes to the light of this court that the commissioner in present of both the counsels and parties had visited the suit property and with the help of the surveyor in presence of Village Administrative Officer had measured the suit property and filed a detailed report.



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This court is satisfied that there is no lacuna in the commission report as stated by the petitioner in his affidavit and it is pertinent to noted that as rightly stated by the respondent/defendant in his counter and that the commissioner had discharged his duty as per the directions of this Hon'ble Court and the present attempt of the petitioner is only with intent to get rid of the earlier report and thereby eschew the valuable evidence on record."

Aggrieved over the same, the present Civil Revision Petition is filed.

4.Heard Mr.D.Lakshmipathy, learned counsel appearing for the revision petitioner and Mr.S.Mukunth, learned counsel appearing for the respondent.

5.Mr.D.Lakshmipathy, learned counsel appearing for the revision petitioner contended that the learned Advocate Commissioner without measuring the respondent's properties and other adjacent properties had filed a report and hence, the same is liable to be scrapped. He also relied on the decision in "*Selvi Vs Dorathy Paul*" reported in "*2013 SCC Online Mad 926*" wherein it has been observed thus:



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26. When a Commissioner is appointed to locate the disputed land, he should carry out the measurements from both sides. In the absence of boundary marks, he should find out the correct boundaries of the nearby survey numbers and after ascertaining boundaries of such lands, three sides of disputed property, and to find out the exact location of disputed land as per the decision in Jagdish Prasad V. State of M.P., AIR 2009 (NOC) 2008 (M.P.) (DB)."

His specific contention is that in the instant case since the Advocate Commissioner has not measured the adjacent properties as well as the respondent's / defendant's properties, the Advocate Commissioner's report cannot be relied upon.

6. Per contra Mr.S.Mukunth, learned counsel appearing for the respondent contended that even as per the schedule 'A' of the plaint the plaintiff had mentioned his property as 40 x 50 = 2000 sq.ft. and that according to the plaintiff, the defendant had encroached upon his land by 2 x 18 sq.ft on the north western side. He also drew the attention of this Court to the Advocate Commissioner's report wherein it is clearly indicated that there is no encroachment over the plaintiff's property and



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therefore in the circumstances, the Advocate Commissioner's report cannot be scrapped at the instance of the revision petitioner / plaintiff.

7.A perusal of the records shows that the plaintiff in the suit has contended that the defendant encroached upon his property measuring 2000 sq.ft. in S.No.217/1A, 1B by 2 ft. x 18 ft. on the north western side. He sought for an appointment of an Advocate Commissioner for noting down the physical features and measure the same with the help of a taluk surveyor. The taluk surveyor measured the land and filed a sketch. It is seen from the records that the sketch filed along with the Advocate Commissioner's report clearly shows that the property of the plaintiff measuring 2000 sq.ft. is intact and the Advocate Commissioner had also observed that there is no encroachment over the plaintiff's property. In the circumstances, scrapping of the Advocate Commissioner's report at this stage cannot be done. The plaintiff, if aggrieved, by the Advocate Commissioner's report can very well file his objections to the Advocate Commissioner's report and proceed with the trial of the case.



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8.In the circumstances, I do not see any reason to interfere with the findings recorded by the trial court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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mtl

Index : Yes/No

Speaking / Non-speaking order



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R. HEMALATHA, J.
mtl

To

- 1.The Sub Court, Pollachi.
- 2.The Section Officer, VR Section, High Court, Madras.

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