



C.R.P.No.1168 of 2020
and C.M.P.No.6299 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

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

C.R.P.No.1168 of 2020
and
C.M.P.No.6299 of 2020

Kathirvel

... Petitioner

..Vs..

1. Chitra
2. Duraisamy

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.02.2020 in I.A.No.907 of 2019 in O.S.No.169 of 2002 on the file of the Principal District Munsif, Attur.

For Petitioner : Mr.V. Lakshminarayanan

For Respondents : Mr.L. Mouli

ORDER

The present Civil Revision Petition is filed against the fair and decretal orders dated 05.02.2020 passed by the learned Principal District Munsif, Attur, in I.A.No.907 of 2019 in O.S.No.169 of 2002 .



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2. The civil revision petitioner is the plaintiff in O.S. No.169 of 2002 on the file of the Principal District Munsif, Attur. He filed the suit for a mandatory injunction to remove the construction put up by the respondents/defendants in the suit property and also for a permanent injunction restraining them from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. He also filed an application in I.A. No.748/2002 for appointment of an Advocate Commissioner to inspect the petition mentioned properties and to measure the same with the help of a qualified taluk surveyor. The learned District Munsif, Attur, vide his orders dated 20.06.2002 appointed an Advocate Commissioner and directed him to inspect the petition mentioned properties and also to measure the same with the help of a Taluk Surveyor and for filing his preliminary report. The learned Advocate Commissioner accordingly inspected the petition mentioned properties and filed his report and plan.

3. Subsequently the plaintiff filed an application in I.A. No.907/2019 for appointment of another Advocate Commissioner to note down the physical features of the petition mentioned properties and to



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measure the same with the help of a taluk surveyor. In the affidavit filed along with the application in I.A. No.907/2019, the present petitioner had contended that the petition mentioned properties in I.A. No.748/2002 were not measured by the Advocate Commissioner with the help of a qualified taluk surveyor as per the orders passed by the learned District Munsif and therefore another Advocate Commissioner should be appointed to measure the petition mentioned properties. The respondents/defendants filed their counter and after full contest, the learned Principal District Munsif, Attur, dismissed the said application vide his orders dated 05.02.2020 on the following grounds:

- i. Without scrapping the report of the Advocate Commissioner, another Advocate Commissioner cannot be appointed.
- ii. The revision petitioner did not file any objection to the Advocate Commissioner's report and plan and therefore scrapping of the report and plan filed by the Advocate Commissioner would not arise.
- iii. The petitioner had failed to give proper reasons for filing a petition for appointment of the 2nd Advocate Commissioner and his intentions seem to be for the purpose of protracting the proceedings.



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Challenging the said orders, the present revision petition is filed.

4. Heard Mr.V. Lakshminarayanan, learned counsel appearing for the revision petitioner and Mr.L. Mouli, learned counsel appearing for the respondents.

5. Learned counsel appearing for the revision petitioner contended that the learned Advocate Commissioner was directed to inspect the petition mentioned properties and to measure the same with the help of a taluk surveyor and file his preliminary report and that in the instant case, the Advocate Commissioner has only filed his preliminary report and did not file the final report. Moreover, he did not also measure the petition mentioned properties with the help of a taluk surveyor as per the orders. However, the application in I.A. No.748/2002 was closed by the learned District Munsif, Attur, on 17.09.2002. It is also contended by him that the 1st item of the petition mentioned properties is the suit property and the 2nd item is the property belonging to the defendants, which is situated on the eastern side of the suit property and the respondents/defendants who have purchased larger extent in the same



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survey number are claiming right over the properties of the petitioner/plaintiff. Therefore, appointment of another Advocate Commissioner is absolutely necessary as far as the present case is concerned to arrive at a just decision in the case.

6. Per contra, the learned counsel for the respondents contended that the revision petitioner/plaintiff did not file any objection to the Advocate Commissioner's report and that the plaintiff during the course of cross examination admitted that the measurements indicated by the learned Advocate Commissioner are correct. In the circumstances, appointment of another Advocate Commissioner is not at all necessary and the trial court has rightly dismissed the application.

7. A perusal of the Advocate Commissioner's report and plan shows that though the Advocate Commissioner was directed to measure the petition mentioned properties with the help of a taluk surveyor and to file his report and plan, the learned Advocate Commissioner did not seek the assistance of a taluk surveyor for measuring the suit property. The trial court in fact closed the petition in I.A. No.748/2002 on 17.09.2022



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by observing that "commissioner's report filed. Objection in 10days.

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Petition closed". It is pertinent to point out that the plaintiff has alleged that the defendants have encroached upon their property to the extent of 9 feet x 36 feet. In the written statement, the defendants have claimed that they have not encroached upon the suit property and that they are putting up construction only in their property.

8. Be that as it may, since the Advocate Commissioner did not measure the suit property with the help of a taluk surveyor, the report filed by the Advocate Commissioner cannot be said to be complete. Merely because the revision petitioner did not file his objections to the Advocate Commissioner's report, it would not take away the rights of the plaintiff to seek appointment of another Advocate Commissioner for measuring the petition mentioned properties with the help of a taluk surveyor. When there is an allegation that the defendants have encroached upon the suit property, measurement of the plaintiff's as well as the defendants' property with the help of a taluk surveyor would considerably reduce the work of the Court to arrive at a right decision.

9. The trial court had committed an error by closing the Advocate Commissioner's report in I.A. No.748/2002 even without



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verifying that the Advocate Commissioner had not measured the petition mentioned properties with the help of a taluk surveyor. In the circumstances, the learned District Munsif, Attur, is directed to take I.A. No.907/2019 on file and appoint an Advocate Commissioner to inspect the petition mentioned properties and measure the same with the help of a taluk surveyor. The learned Advocate Commissioner should also be directed to file his report and plan within a period of one month from the date of his appointment.

10. With the above directions, this Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

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Index : Yes/No

Speaking / Non-speaking order



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R. HEMALATHA, J.
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To

- 1.Principal District Munsif, Attur
- 2.The Section Officer, VR Section, High Court, Madras.

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