



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).No.1178 of 2017
and
CMP.No.5609 of 2017

K.Vadivel

..Petitioner

Vs.

1.Annamalai
2.Manickam
3.Venkatachalam

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the District Munsif Court at Sankari dated 23.01.2017 in I.A.No.1126 of 2016 in I.A.No.30 of 2012 in O.S.No.295 of 20 10.

For Petitioner : Mr.P.Valliappan

O R D E R

A perusal of the records show that the respondents / defendants in O.S.No.295 of 2010 had been served and in the cause list, their names and addresses are also printed. This was the position even on 14.02.2022, and this Court had given one further opportunity and gave a direction to the Registry to examine, whether any counsel had entered appearance on behalf of the respondents and the matter was adjourned. Again, there is no response. There is a counsel appearing for the revision petitioner, who is the plaintiff in the said suit.

2.The suit O.S.No.295 of 2010 had been filed seeking permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff and from damaging or dismantling the earthen crops bunds in the boundary of the suit property. The suit property is a vacant land stretching to several survey numbers. In the said suit, the respondent / 1st defendant had filed a written statement. It is seen that the respondents / defendants filed I.A.No.30 of 2012, seeking appointment of an Advocate Commissioner. An Advocate Commissioner was appointed and warrant also issued. The Advocate Commissioner filed a report along with rough sketch of the lay of the land.

3.Complaining that physical features have not been noted by



the Commissioner and the plan, after due measurement of the property had also not been filed by him, the revision petitioner had filed I.A.No.1126 of 2016, seeking to reissue the warrant to the very same Advocate Commissioner. It must be mentioned that objections were also filed to the report of the Advocate Commissioner. The application in I.A.No.1126 of 2016 came up for consideration before the District Munsif at Sankari. The learned District Munsif, by order dated 23.01.2017, dismissed the said application, necessitating filing of the present revision petition.

4.Mr.P.Valliappan, learned counsel appearing for the revision petitioner pointed out that objections had been filed with respect to the nature of inspection done and on the fact that the Advocate Commissioner had not furnished a plan of the lay of the land, which can be furnished only, if measurements had been taken and that even the physical features had not been mentioned and that boundaries had not been pointed out in the report.

5.However, the learned District Munsif, taking into consideration the fact that the suit has been filed nearly about 10 years ago, granted opportunity to the plaintiff to lead evidence but the plaintiff had not taken that opportunity and finally filed I.A.No.1126 of 2016.

6.Later, the learned District Munsif had proceeded further by questioning the very appointment of the Advocate Commissioner and stating that it was the duty of the parties to the suit to prove their case to lead evidence. That part of the order requires to be interfered with.

7.Primarily, the Advocate Commissioner had already been appointed and therefore, the District Munsif cannot go around and question the necessity to seek appointment of an Advocate Commissioner. What is now sought is only for a direction to the Advocate Commissioner to revisit the property and to file a better report with measurements of the lay of the land.

8.Therefore, I would interfere with the order of the District Munsif, and instead of directing the warrant to be reissued, let me remit the matter back, since all the respondents are not present here. Therefore, this matter is remitted back to the District Munsif Court, Sankari to rehear the application and the learned District Munsif should examine it purely as an issue to be decided on facts and by applying the law on such facts.

9.The learned District Munsif should not enter into a discussion whether a Commissioner is actually required since



that stage has already crossed and a judicial order already passed. The said discussion could have been indulged when appointment of an Advocate Commissioner in I.A.No.30 of 2012 was sought and not in an application seeking to reissue the warrant. Therefore, the learned District Munsif, Sankari is directed to rehear the parties and pass fresh order on merits.

10.With the above observations, this Civil Revision Petition is allowed. The matter is remitted back for fresh hearing of I.A.No.1126 of 2018. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kkn

To-

1.The District Munsif Court,
Sankari.

+1cc to Mr.P.Valliappan, Advocate, S.R.No.11949

C.R.P(PD).No.1178 of 2017 and
CMP.No.5609 of 2017

RSV(CO)
CT 10/03/2022