



CRP.No.3723 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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and

CMP.No.19668 of 2022

Elumalai Naicker (Died)

1.Muthammal

2.Lingeswaran

3.Dharani

... Petitioners

Vs.

Ganesa Naicker (Died)

1.Deivanayaki

2.Raman

3.Kamala

4.Vasantha

5.Lakshminarayana

6.Govindammal

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and the decretal order dated 10.08.2022 made in E.A.No.21 of 2020 in E.P.No.84 of 1998 in



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O.S.No.22 of 1991 on the file of the learned District Munsif, Chengalpattu by allowing the Civil Revision Petition with cost.

For Petitioner : Mr.S.Ruban Prabu

ORDER

This Civil Revision Petition is filed, challenging the order passed by the Court below re-issuing the warrant to the Advocate Commissioner to inspect the suit property with help of Taluk Surveyor to identify the suit property and file his report and plan.

2. The respondents herein obtained decree for possession against the petitioners in O.S.No.22 of 1991 on the file of the learned District Munsif, Chengalpattu, and as per the decree, the petitioners were directed to deliver possession of portion of the property marked as 'ABCD' in the plan report. The property was ordered to be delivered by the decree with an extent of 0.01 cent situated in S.No.134/7, and the



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said portion is mentioned as 'ABCD' in the plan.

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3. The respondents filed an execution petition seeking delivery of the property. Earlier, the Executing Court appointed an Advocate Commissioner to identify the 0.01 cent to be delivered to the respondents as per the decree. He filed a report stating that 0.01 cent to be delivered to the respondents is not identifiable. Thereafter, the Executing Court suo-motu re-issued the warrant to the Advocate Commissioner to re-visit the property and identify the portion to be delivered. The said order was challenged by the petitioners in CRP.No.1947 of 2013.

4. This Court set aside the order passed by the Executing Court on the ground, without a formal petition by either of the parties, the Executing Court was not justified in directing the Advocate Commissioner to re-visit the property. In the said order, both the parties were also given liberty to raise objections to the report submitted by the



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Advocate Commissioner.

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5. Thereafter, the respondents/decree holders as well as the petitioners/judgment debtors filed their objections to the Commissioner's report. The respondents/decree holders filed an application in E.A.No.21 of 2020 seeking a direction to the Commissioner to re-visit the suit property with help of the Taluk Surveyor and demarcate the 0.01 cent to be delivered to the respondents as per the decree.

6. In the affidavit filed in support of petition as well as his objection to the Commissioner's report, it is mentioned by the respondents that the Advocate Commissioner failed to execute warrant and as per the plan appended with the decree. The 0.01 cent to be delivered to the respondents lies on the western extreme of the portion



in S.No.134/7 and the same is shown as 'ABCD' in the plan.

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7. The Court below by the impugned order directed the Advocate Commissioner to identify the property to be delivered to the respondents with help of the plan appended to the decree. Even in the impugned order, the Court below directed the Advocate Commissioner to identify the 0.01 cent to be allotted to the decree holders based on the plan appended to the decree.

8. In fact, the Executing Court, in the order, recorded that the earlier Commissioner did not refer to the plan appended with the decree at the time of visiting the suit property and tried to identify the 0.01 cent based on the plan appended to the decree. Therefore, having dis-satisfied with the earlier report filed by the Advocate Commissioner, by impugned order, the Executing Court had inclined to scrap the earlier report and appointed a fresh Advocate Commissioner



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to identify the portion of the property to be delivered to the respondents as per decree with help of the plan appended with the decree.

9. When the Advocate Commissioner makes local inspection for the purpose of identifying the 0.01 cent as per the description found in the plaint as well as plan appended with the decree, it is always open to the revision petitioners to explain before the Commissioner that the details mentioned in the plan are insufficient to identify the 0.01 cent. The sufficiency of the plan appended to the decree for identifying 0.01 cent has to be considered by the Advocate Commissioner and Surveyor at the time of local inspection. Therefore, I do not find any infirmity or illegality in the order passed by the Court below.

10. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is



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closed.

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Index : Yes / No

Internet : Yes / No

dna

To

The District Munsif, Chengalpattu.

S.SOUNTHAR, J.

dna

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