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CRP .No.3619 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2022

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

CRP .No.3619 of 2022

and

C.M.P.No.19192 of 2022

Booma Naickar

... Petitioner

Vs.

S.Sivaranjini

.... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 23.09.2022 made in I.A.No.2 of 2022 in O.S.No.7 of 2022 on the file of the District Munsif Court, Bhavani.

For Petitioner : Mr.V.Anandhamoorthy

ORDER

This Civil Revision Petition is filed challenging the order passed by the court below to allow the petition filed by the respondent seeking appointment of an Advocate Commissioner to measure the suit Item Nos. 1 and 2 with the help of the Surveyor and fix the boundary lines.



CRP .No.3619 of 2022

WEB COPY

2. The respondent herein has filed a suit for declaration and recovery of possession in respect of Item No.2 and for fixation of four boundaries in respect of Item No.1. The respondent also prayed for removal of offending construction in Item No.2.

3. Pending suit, the respondent/plaintiff filed an application seeking appointment of Advocate Commissioner to measure item Nos.1 and 2 in the suit property with the help of firka Surveyor to note down the physical features and fixation of four boundaries of the properties.

4. The said application was opposed by the petitioner/defendant mainly on the ground that the appointment of surveyor by the court below would amount to granting of second prayer in the suit even without the trial. The court below has appointed the Advocate Commissioner with a direction to him to take the help of Surveyor to measure the property, note down the physical features and file a report by fixing four boundaries of the suit properties. Aggrieved by the said order, the petitioner is before this court.

5. The learned counsel for the petitioner has vehemently assailed the



CRP .No.3619 of 2022

WEB COPY

order passed by the court below on the ground that the appointment of Advocate Commissioner by the court below to fix the four boundaries of Item No.1 of the suit property would amount to granting of the second prayer in the plaint even without prayer.

6. It is settled law that the Advocate Commissioner's report is only a tool for the court to come to correct conclusion with regard to the controversies involved in the suit. If Advocate Commissioner files a report after measuring the suit property with the help of Surveyor and fixing the four boundaries, it is always open to the revision petitioner to file his objections to the said report and make his arguments before the court below raising his objections. The court below has to decide whether to accept the report in *toto* or in part or reject the same, based on the other evidences available on record. Therefore, it is settled law that the report submitted by the Advocate Commissioner is not conclusive. It has to be decided along with other evidences let in by the parties at the time of trial of the suit. Therefore, I do not think that the order appointing the Advocate Commissioner would amount to granting second prayer in the suit and hence



CRP .No.3619 of 2022

WEB COPY

impugned order will not cause any prejudice to the petitioner. Hence, the same need not be interfered with.

7. Accordingly, this Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

10.11.2022.

Index : Yes/No

Internet : Yes/No

gv

To

The District Munsif Court,

Bhavani.



WEB COPY



CRP .No.3619 of 2022

S.SOUNTHAR, J.

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CRP .No.3619 of 2022

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