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C.R.P. No.3574 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2022

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3574 of 2017
and
C.M.P.No. 16840 of 2017

Kandasamy,
S/o. Late Nachiappa gounder

... Petitioner

Versus

Palanisamy,
S/o. Kandasamy Gounder

... Respondent

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the Fair and Decreeal order dated 17.03.2017 made in I.A.No. 305 of 2016 in I.A.No.872 of 2014 in I.A.No.189 of 2013 in O.S.No. 58 of 2013 on the file of Hon'ble District Munsif Court, Dharapuram.

For Petitioner : Mr.N.Ponraj

For Respondent : No appearance



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ORDER

This Civil Revision Petition has been filed against the Fair and Decretal order dated 17.03.2017 made in I.A.No.305 of 2016 in I.A.No.872 of 2014 in I.A.No.189 of 2013 in O.S.No.58 of 2013 on the file of District Munsif, Dharapuram.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The petitioner herein is the plaintiff in the suit claiming the relief of declaration of Tamarind tree belongs to the plaintiff situated in S.F.No.285A16. During the pendency of the suit, the Advocate Commissioner was appointed and with the help of Taluk Surveyor, Advocate Commissioner measured the property and a report was filed in respect of Tamarind tree. Again, the petitioner filed an application in I.A.No.189 of 2013 to appoint an advocate commissioner to measure the property and to file his report. But, the said application was closed by the trial court. To



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reopen the said application, he has filed another application in I.A.No. 872 of 2014 and that application was also dismissed by the trial court on merits stating that already the Advocate Commissioner was appointed and his report was on file. When the said report was in force, the plaintiff is not entitled to claim the relief for appointment of another Advocate Commissioner without setting aside the earlier Commissioner's report on merits. Hence, that application as such is not maintainable in law.

4. The trial court, on considering the submissions on either side, finally held that already the warrant was issued to the Advocate Commissioner at the request of plaintiff and the property was measured with the help of Taluk Surveyor. Then he has filed the application in I.A.No.305 of 2016 to measure the property with the help of District Surveyor without assigning any reason and the plaintiff going on filing one or other applications. If he is not satisfied with the report, he can very well file his objections to the commissioner's report. Hence, the reasons assigned by the petitioner in the application to re-issue the warrant and to measure the property with the help of District Surveyor is not acceptable one and



accordingly, that application was dismissed.

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5. Challenging the said order, the petitioner preferred this Civil Revision Petition stating that the lower court failed to appreciate the reasons assigned by the petitioner/plaintiff that the location of the suit tree was not properly identified by the Advocate Commissioner nor by the surveyor. Therefore, the findings rendered by the trial court is liable to be set aside as it is erroneous one.

6. Today, when the matter taken up for hearing, there is no representation on the side of respondent. On perusal of records, it reveals that in respect of Tamarind tree in the suit property, the plaintiff filed a suit claiming title over the tamarind tree in the year 2013. The defendant appeared and submitted his written statement, thereafter, the Advocate Commissioner was appointed at the instance of plaintiff and the property was measured with the help of Surveyor. The Commissioner's report along with Surveyor report was also submitted before the trial court. Thereafter, the plaintiff filed another application to measure the property along with



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District Surveyor and to re-issue the warrant to the other Advocate

Commissioner because, the earlier Advocate Commissioner has not properly identified the location of the Tamarind tree. But, on perusal of Commissioner's report annexed with this application, it reveals that entire property of suit survey number was measured with the help of Taluk Surveyor and he identified the property situated in Survey No.285/A19. So, if at all, the petitioner/plaintiff is not satisfied with the report, he has to file his objection before the trial court. Subject to his objections, the report is to be appreciated on merits by the trial judge during trial. Therefore, there is no necessity to appoint another Advocate Commissioner to measure the property with the help of District Surveyor. The Advocate Commissioner's report along with Surveyor report filed before the trial court is sufficient to decide the issue between the parties during trial. Hence, the reasons assigned by the petitioner/plaintiff to re-issue the commissioner's warrant to another commissioner as such is not maintainable and the trial court rightly dismissed that application. So also, the application filed by the petitioner/plaintiff in I.A.No.305 of 2016 to re-open the application is rightly dismissed by the trial judge, which needs no interference. Accordingly, this



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Civil Revision Petition is dismissed as no merits. However, the trial court is directed to dispose the suit as per manner known to law within a period of three months from the date of receipt of copy of this order. No costs. Consequently, the connected C.M.P. stands closed.

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To

XV Judge, Small Causes Court,
Chennai.



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T.V.THAMILSELVI, J.

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