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CRP.No.4009 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4009 of 2017

and

CMP.No.18766 of 2017

P. Velusamy

.. Petitioner

Versus

P. Krishnammal (Died)

1. R. Chandran,

2. R. Vijayan,

3.Indirani,

4. Girija

5. Subbulakshmi

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 11.04.2017 made in I.A.No.693 of 2011 in O.S. No.350 of 2011 on the file of the Principal Sub-Court, Coimbatore.



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CRP.No.4009 of 2017

For Petitioner : Ms.J.T. Ajitha
(For K. Govi Ganesan)

For Respondents :Mr. P. Valliappan
(For RR 1 & 2)
: No Appearance for R3 - R5

ORDER

This Civil Revision Petition has been filed by the petitioner/defendant seeking to set aside the fair and decreetal order dated 11.04.2017 made in I.A.No.693 of 2011 in O.S. No.350 of 2011 on the file of the Principal Sub-Court, Coimbatore.

2. The petitioner is the defendant and the respondents are the plaintiffs in the original suit.

3. The case of the petitioner is that the respondents/plaintiffs have filed the suit in O.S. No.350 of 2011 seeking for permanent injunction restraining the 1st defendant and any one acting on his behalf/under his instructions from altering the physical features/damaging the suit property in any way either by trespassing and encroaching the suit property in any manner whatsoever and directing the 1st defendant to pay a sum of



Rs.1,29,750/- towards the damages caused to the suit property by the 1st defendant. Pending the suit, the respondents/plaintiffs have filed an application in I.A. No.1879 of 2008 before the Trial Court seeking for to appoint an advocate Commissioner to inspect the suit property to note down the physical features along with assistance of the engineer. The same was allowed. Without giving any notice to the defendant/petitioner herein, the Advocate Commissioner inspected the suit property and drew the plans and filed along with the Commissioner report. Not satisfied with the Advocate Commissioner Report filed by the Advocate Commissioner appointed earlier, the defendant/petitioner herein has filed I.A. No.693 of 2011 under Section 75 and order 26 Rule 9 of CPC before the Trial Court seeking to appoint an Advocate Commissioner to revisit and inspect the suit property. The same was dismissed by order dated 11.04.2017 by the Court below holding that no points have been expressed properly for appointing of Advocate Commissioner for second time and without setting aside the earlier commissioner report, new commissioner cannot be appointed. Being not satisfied with the aforesaid order, the defendant has filed the present Civil Revision Petition to set aside the same.



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4. The learned counsel for the petitioner would submit that the Court below failed to see that the Advocate Commissioner has visited the suit property without giving any notice to the defendant/petitioner herein as a result of which the petitioner has not given any instructions to the Advocate Commissioner. The Advocate Commissioner had drawn two different plans and both the plans do not tally with each other and does not depict the existing physical feature of the suit property including several pits. No report with regard to alleged soil was removed. Hence, it is necessary to appoint an advocate commissioner to note down the physical features of the suit property in order to bring notice of the entire facts of the Court below. Without considering the aforesaid aspects, the Court below has dismissed the said application and hence it is liable to be set aside.

5. The learned counsel for the respondents 1 and 2 would submit that the entire physical features of the suit property was already inspected by the Advocate Commissioner appointed by the Court below and report was also filed accordingly. While being so, there is no need to appoint an



Advocate Commissioner again to revisit the suit property and file his report. Hence, the Civil Revision petition is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that the petitioner is the sale agreement holder regarding the suit property. However, there is a dispute between the plaintiffs/respondents herein and the defendant/petitioner herein that the petitioner had trespassed into the suit property and excavated the soil by causing damages to the same. That is what the circumstances, the respondents herein have filed the suit in O.S. No.350 of 2011 seeking for permanent injunctions against the defendant/petitioner herein. Even though an Advocate Commissioner filed his report after inspecting the physical features of the suit property, the petitioner has complained the report filed by the Advocate Commissioner as it is not tallied with the physical features of the suit property. Under such circumstances, this Court is inclined to grant one more opportunity to the defendant/petitioner herein to take the same Advocate Commissioner for revisiting the suit property in the presence of both parties and file his final



report. The Advocate Commissioner is hereby directed to send notice to the parties concerned to get their instruction at the time of inspection and submit his report within a period of four weeks from the date of receipt of copy of this order. The liberty is given to the plaintiffs to file an objection, if any in the report, within a period of two weeks from the date of submission of report of the Advocate Commissioner. Since the matter is of the year 2011, the Trial Court is hereby directed to dispose of the case within a period of six months from the date of receipt of copy of this order.

8. With the aforesaid directions, the Civil Revision petition is allowed. Consequently, connected miscellaneous petition is closed if any. No costs.

10.10.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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To

1. The Principal Sub-Court, Coimbatore.
2. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

Lbm

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