



CRP(PD)(MD)Nos.1392 and 1393 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)Nos.1392 and 1393 of 2022
and CMP(MD)Nos.5772 and 5773 of 2022

A.Balakrishnan

... Petitioner in both
CRPs.

Versus

A.Anandharajan

... Respondent in both
CRPs.

Prayer in CRP(PD)(MD)No.1392 of 2022: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.11.2021 made in I.A.No.514 of 2019 in O.S.No.34 of 2017 on the file of the District Munsif, Sivakasi.

Prayer in CRP(PD)(MD)No.1393 of 2022: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.11.2021 made in I.A.No.1 of 2020 in O.S.No. 34 of 2017 on the file of the District Munsif, Sivakasi.



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For Petitioner in
both CRPs. : Mr.S.R.Sathan Boopathy
For Respondent in
both CRPs. : Mr.S.Balaji

COMMON ORDER

These Civil Revision Petitions are filed against the common order dated 08.11.2021 passed in I.A.No.514 of 2019 and I.A.No.1 of 2020 in O.S.No.34 of 2017 by the learned District Munsif, Sivakasi.

2. The petitioner herein is the defendant in O.S.No.34 of 2017, which is pending on the file of the District Munsif Court, Sivakasi. The respondent/plaintiff filed I.A.No.175 of 2017 under Order 26 Rule 9 C.P.C. to appoint an Advocate Commissioner to inspect the suit schedule property, which was allowed by the trial Court. The Advocate Commissioner has also inspected the suit schedule property in the presence of the counsels and filed his report on 18.01.2018. The petitioner/defendant has also raised certain objections to the Advocate



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Commissioner's report on 02.02.2018, which were rejected by the trial Court. Thereafter, the petitioner/defendant filed an interlocutory application in I.A.No.514 of 2019 under Order 26 Rule 9 C.P.C. on 28.06.2019, seeking re-issuance of warrant to a new Advocate Commissioner. In that application, the respondent/plaintiff filed his counter affidavit that without scrapping the earlier Commissioner's report filed in I.A.No.175 of 2017, the application is not maintainable. Thereafter, the petitioner/defendant has filed another interlocutory application in I.A.No.1 of 2020 on 12.12.2019 to scrap the earlier Commissioner's report filed in I.A.No.175 of 2017 and to appoint a new Advocate Commissioner to re-survey the suit schedule property with the help of VAO and Surveyor. Both the interlocutory applications were taken up together by the trial Court and the same were dismissed by a Common Order dated 08.11.2021. Aggrieved over the same, the present Civil Revision Petitions are filed.



3. The learned counsel appearing for the petitioner submits that the Advocate Commissioner, during his visit, measured the respondent's property alone. He has also raised certain objections that the existence of gate in Survey No.64 and the existence of north-south side road were not mentioned by the Advocate Commissioner.

4. The learned counsel appearing for the respondent submits that the respondent/plaintiff has purchased the property from the petitioner/defendant and he has also claimed the right of pathway based on the sale deed executed by the petitioner/defendant. According to him, the petitioner/defendant has put up a construction and prevented the respondent/plaintiff from using the pathway. Therefore, the respondent/plaintiff has filed the suit in O.S.No.34 of 2017. Since there is a dispute over the pathway, the respondent/plaintiff filed I.A.No.175 of 2017 seeking appointment of an Advocate Commissioner. The trial Court has allowed the said application and appointed an Advocate Commissioner. The Advocate Commissioner



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has also submitted his report on 18.01.2018. However, the petitioner/defendant has also raised certain objections on the Commissioner's report. The trial Court rejected the objections made by the petitioner/defendant and marked the Commissioner's report and sketch as Court Document Nos.1 and 2. Thereafter, the petitioner/defendant filed I.A.No.514 of 2019 to re-issue the commissioner's warrant to examine the suit schedule property by appointing a new Advocate Commissioner. The respondent/plaintiff has also raised certain objections stating that without scrapping the earlier advocate commissioner's report, the application is not maintainable. Thereafter, the petitioner/defendant filed I.A.No.1 of 2020 to scrap the earlier Commissioner's report filed in I.A.No.175 of 2017 and to appoint a new Advocate Commissioner to re-survey the suit schedule property with the help of VAO and Surveyor. The application to scrap the earlier Advocate Commissioner's report has been filed belatedly in order to fill up the lacuna pointed out by the petitioner/defendant in his counter affidavit. Therefore, there is no



reason to interfere with the orders of the trial Court.

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5. This Court considered the rival submissions and also perused the materials available on record.

6. According to the respondent/plaintiff, he purchased the property from the petitioner/defendant, but, the petitioner/defendant put up a construction and prevented him from using the pathway. Therefore, he filed the suit in O.S.No.34 of 2017 and he has also filed I.A.No.175 of 2017 seeking appointment of an Advocate Commissioner to inspect the suit property. The said application was allowed by the trial Court, by appointing an Advocate Commissioner to inspect the suit property. Pursuant to the same, the Advocate Commissioner inspected the suit property and filed a report and sketch, which were also marked as Court Document as Exs.C1 and C2.



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7. Now, it is the grievance of the petitioner/defendant that at the time of inspecting the suit property, the Advocate Commissioner has measured the respondent/plaintiff's property alone and failed to mention the existence of gate in Survey No.64 and also the existence of north-south side road. Therefore, he has filed I.A.No.514 of 2019 seeking re-issuance of warrant to a new Advocate Commissioner and also filed I.A.No.1 of 2020 to scrap the earlier commissioner's report. The trial Court rejected the applications on the following reasons:

(i) The petitioner did not point out any defect in the earlier Commissioner's report.

(ii) The petition is filed to inspect the wall erected by the plaintiff in the suit schedule properties.

(iii) It amounts to collecting of evidence in favour of one party and therefore, an advocate commissioner cannot be appointed for that purpose.



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8. The object of local investigation under Order 26 Rule 9 C.P.C.

is not to collect evidence. It is a well settled law that an Advocate Commissioner cannot be appointed to collect the evidence and it is for the parties to prove the case by oral or documentary evidence. The parties of the suit has to prove who is in possession of the suit schedule properties by examining the evidence and documents and not through an Advocate commissioner. The Court shall not appoint an Advocate Commissioner for taking measurement of the suit properties in a mechanical manner without considering the need for appointment of Advocate Commissioner. It is also well settled law that in absence of any tangible ground for setting aside the earlier report of the Commissioner, the Court will not appoint second commission.

9. Since there is no tangible ground for setting aside the earlier Commissioner's report and also considering the fact that advocate commissioner cannot be appointed for mere collection of evidence, this court is not inclined to interfere with the orders passed by the trial



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Court.

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10. Accordingly, both the Civil Revision Petitions are dismissed. However, considering the fact that the suit is of the year 2017, the trial Court is directed to conclude the trial and dispose of the suit in O.S.No. 34 of 2017, as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

22.09.2022

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Index : Yes / No.

Internet: Yes / No.

To

1. The District Munsif,
Sivakasi.



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B.PUGALENDHI, J.

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