



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2022

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD)No.1502 of 2017

and

C.M.P. (MD)Nos.8143 of 2017

WEB COPY

1.S.Durai

2.D.Hema

... Revision Petitioners/Respondents/
Respondents/Defendants

Vs.

M.S.Ramamoorthy

... Respondents/Petitioner/Petitioner/
Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.32 of 2017 in I.A.No.179 of 2014 in O.S.No.1078 of 2011 dated 29.06.2017 on the file of the learned III Additional District Munsif, Tiruchirapalli.

For Petitioners : Ms.M.Anbarasi

For Respondent : No appearance

ORDER

The respondent herein is the plaintiff in the suit in O.S.No.1078 of 2011 filed before the learned III Additional District Munsif, Tiruchirappalli, against the petitioners herein, in which, the respondent herein has filed an application under Order 26 Rule 9 read with Section 151 CPC to re-issue the commission warrant to the Advocate Commissioner to note down the measurements of the encroachments into the suit property and the said petition was allowed by the trial Court. Challenging the said order of re-issue of warrant, the petitioners have filed the present Civil Revision Petition before this Court.

2. Heard the learned counsel for the petitioners and there is no representation for the respondent.

3. The learned counsel for the petitioners would submit that already two applications were filed by the respondent in the said suit in I.A.No.363 of 2011 and I.A.No.179 of 2014, to appoint an Advocate Commissioner to inspect the suit property, to note down the features of the suit property with the assistance of Surveyor and file a report along with a Plan. Both the petitions were allowed and the Advocate Commissioner also inspected the suit property and



filed a report. Once again, the respondent filed a third application in I.A.No.32 of 2017 in I.A.No. 179 of 2014 to re-issue the commission warrant to the Advocate Commissioner with directions to note down the measurement of the encroachments into the suit property.

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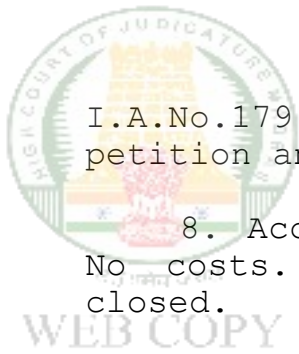
4. It is the contention of the learned counsel for the petitioners that the Advocate Commissioner cannot be appointed to collect the evidence and find out the encroachments. The trial Court failed to appreciate the contention raised by the respondent herein and therefore, the order passed by the trial Court is liable to be set aside.

5. Though there is no representation on the side of the respondent, heard the learned counsel for the petitioner and perused the records.

6. Admittedly, the respondent herein filed a suit in O.S.No.1078 of 2011 before the learned III Additional District Munsif, Tiruchirappalli, for permanent injunction as well as mandatory injunction against the petitioners herein. In the said suit, as stated by the learned counsel for the petitioners, an Advocate Commissioner was appointed and he filed his report. Once again, the respondent had filed another application in I.A.No.179 of 2014 to appoint an Advocate Commissioner to measure the properties with the help of the qualified Surveyor. That was allowed and the Advocate Commissioner also inspected the property and filed the report for which the petitioners and the respondent herein had filed their objections. Subsequently, the respondent has filed another application in I.A.No.32 of 2017 in I.A.No.179 of 2014 to re-issue the warrant to the same Advocate Commissioner who was appointed by the Court in I.A.No.179 of 2014 and note down the encroachment and take the measurement of the encroachments pointed out by the Commissioner in the sketch as P1, P2 and P3 and that petition was also allowed by the trial Court.

7. Since one of the reliefs sought for is mandatory injunction and in order to get the decree in the case that would be passed in favour of the respondent/plaintiff regarding mandatory injunction and that unless the encroached portions are identified or earmarked, it is difficult to execute the decree. Therefore, though the petitioners have filed application to re-issue the warrant to measure the encroachment already shown in the Advocate Commissioner's report, no prejudice would be caused to the petitioners when the same Advocate Commissioner re-inspect the property and measure the encroached portion. If whether encroachment is made or not, is the matter to be decided by the trial Court. Therefore, under these circumstances, this Court does not find any reason to interfere with the order passed by the III

<https://hcdistrictcourts.gov.in/foi-services/> District Munsif, Trichirappalli, in I.A.No.32 of 2017 in



I.A.No.179 of 2014 and therefore, there is no merit in the revision petition and the same is liable to be dismissed.

8. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The III Additional District Munsif, Tiruchirapalli.

2.The Record keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai. (2C)

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SR (CO)

GC(10.02.2022) 3P 4C