



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1614 of 2017

and

C.M.P(MD)No.9112 of 2017

M.Lourdusamy

... Petitioner/Respondent
Petitioner/Plaintiff

Vs.

D.Poulraj

... Respondent/Petitioner
Respondent/Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India as against the fair and decreetal order, dated, 09.03.2017, passed in I.A.No.396 of 2016 in I.A.No.1447 of 2014 in O.S.No.213 of 2013 on the file of Additional District Munsif Court, Srivilliputhur.

For Petitioner : Mr.M.P.Senthil
For Respondents : No appearance

ORDER

The plaintiff is the petitioner herein.

2. The suit was filed with the prayer for declaration of title and recovery of possession over 'B' schedule property and for mandatory injunction over 'C' schedule property. Pending the suit, the plaintiff filed an application in I.A.No.1447 of 2014 for appointment of an Advocate Commissioner to note down the physical features and to note down the extent of encroachment made by the defendant. The Commissioner filed his report on 13.03.2015. Thereafter, the defendant filed an objection to the Commissioner's report on 16.04.2015. Thereafter, the defendant filed I.A.No.396 of 2016 to re-open the Commissioner's application for the purpose that the Commissioner should revisit the spot and filing the second report. This application was objected by the plaintiff on the ground that the present application has been filed only to drag on the proceedings. The learned trial Judge has allowed the application on the ground that already objection has been filed to the Commissioner's report and the defendant is not satisfied with the



Commissioner's report. Hence, the Commissioner application can be re-opened. As against the said order, the present revision petition has been filed by the plaintiff.

3. The learned counsel for the petitioner contended that if the defendant wants to collect some more evidence through the Commissioner, the warrant to the Commissioner can be re-issued and the Commissioner application itself need not be re-opened. Re-opening of the Commissioner application would result in setting aside of the appointment of an Advocate Commissioner itself. Such a course should not have been exercised by the trial Court.

4. Though the respondent has been served, there is no appearance either in person or through counsel.

5. When a party is aggrieved over the Commissioner's report, he can file an objection to the Commissioner's report and if he wants to collect some more evidence through the Commissioner, he can seek to re-issue of the warrant to the same Commissioner. A perusal of the affidavit does not disclose any allegation as against the Commissioner or irregularity with regard to the report of the Commissioner. In such circumstances, the order passed by the trial Court, re-opening the Commissioner's application itself is highly erroneous and liable to be set aside. The order passed by the trial Court is set aside.

6. Accordingly, this Civil Revision Petition is allowed. However, the parties are at liberty to file an application for re-issue of warrant to the same Advocate Commissioner, if they are so advised. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Additional District Munsif Court,
Srivilliputhur.



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-17673[F] dated 11/04/2022)

C.R.P (MD)No.1614 of 2017
08.04.2022

KS (CO)
KB (29.04.2022) 3P 4C