



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.(MD)No.2235 of 2017

and

C.M.P(MD) No.10924 of 2017

1.Vijayalakshmi
2.Selvam
3.Kannan
4.Sridhar

... Petitioners/Petitioners/
Respondents

-vs-

Selvamani

... Respondent/Respondent/
Appellant

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.08.2017 in I.A.No.99 of 2017 in A.S.No.57 of 2010 on the file of the Principal Sub Court, Kumbakonam.

For Petitioners : Mr.K.Govindarajan
For Respondent : Mr.I.Suthakaran

ORDER

This civil revision petition is filed challenging the order dated 22.08.2017 passed in IA No.99 of 2017 on the file of the Principal Sub Court, Kumbakonam.

2.The said interlocutory application was filed by the revision petitioner herein to examine the surveyor. However, the same came to be rejected by the Court below citing the reason that the revision petitioner has not made any objection to the advocate commissioner's report. Therefore, he is not entitled to examine the surveyor. Further, the Court below observed that the application filed by the revision petitioner herein for reissuing the commission warrant in I.A.No.67 of 2016 was dismissed. Ultimately, the Court below has come to the conclusion that only for the purpose of protracting the proceedings, the application was filed and dismissed the said Interlocutory application. Aggrieved over the said order, the present civil revision petition has been filed.

3.The learned counsel for the petitioner would contend that I.A.No.99 of 2017 was filed for the purpose of examining the surveyor. The petitioner has not made any objection to the Advocate Commissioner's report, since he has filed I.A.No.67 of 2016



objecting the Advocate Commissioner's report and seeking to reissue the warrant, that is the reason why, he has not made any objection. Without considering all these aspects, the Court below dismissed the application. Hence, he prayed to interfere with the order of the Court below and permit the petitioner to cross examine the surveyor.

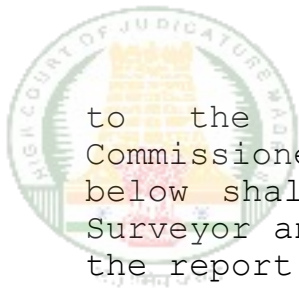
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4. On the other hand, the learned counsel for the respondent would contend that the court below passed an order after considering the aspect that objection was not filed to the Advocate Commissioner's report. Further, I.A.No.67 of 2016 filed by the revision petitioner was dismissed, which was filed to reissue the commission warrant. Hence, the court below has come to the conclusion that the petitioner is not entitled the relief sought for. Therefore, the present appeal is liable to be dismissed.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

6. Upon the hearing, it appears that originally the suit in O.S.No.473 of 2006 was filed by the deceased Paramasivam before the District Munsif Court, Kumbakonam. The revision petitioners herein are the legal heirs of the deceased Paramasivam and the said suit was decreed in favour of the plaintiff. Aggrieved over the same, the appeal in A.S.No. 57 of 2010 was filed by the respondent herein and the same was remanded vide order dated 20.01.2011, against which, C.M.A(MD)No. 26 of 2012 was filed before this Court. This Court, vide order dated 17.02.2012, set aside the order of remand stating that appellate Court itself has to decide the appeal and appoint an advocate commissioner as the Appellate Court itself is empowered to appoint the Advocate Commissioner. Thereafter, the appellate Court appointed the Advocate Commissioner and the Advocate Commissioner has also filed a report. The revision petitioners herein have not satisfied with the report filed by the Advocate Commissioner. Hence, they filed an application in I.A No.67 of 2016 to reissue the Advocate Commissioner warrant and the same was dismissed. Since the revision petitioners filed an application to reissue the commission warrant, they have not filed any objection to the Advocate Commissioner report filed in IA No.199 of 2017.

7. It is an admitted fact that the petitioners have not at all filed any objection to the Advocate Commissioner's report. But, they filed an application to reissue the Advocate Commissioner warrant. Unless and otherwise the previous Advocate Commissioner report is scrapped, the Court cannot reissue the warrant, based on the application filed by the petitioner. On this aspect, the Court below is correct in dismissing the application. However, the Court cannot say that there was no objection to the above original Advocate Commissioner report, but there was an objection in the form of an application to reissue the warrant. Therefore, this Court is of the opinion that it would be appropriate to give an opportunity



to the petitioners to file an objection to the Advocate Commissioner report in I.A.No.99 of 2017 and if necessary, the Court below shall permit the revision petitioners to cross-examine the Surveyor and the Advocate Commissioner and thereafter decide whether the report can be recorded or the same is liable to be scraped.

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8. In view of the above, this Court while upholding the order passed by the Court below, granting liberty to the revision petitioners to file an objection to the Advocate Commissioner report filed, in I.A.No.99 of 2017 and thereafter the Court below shall hear both the parties, if necessary permit the parties to cross - examine the Surveyor and the Advocate Commissioner and decide the matter whether the Advocate Commissioner report needs to scrap or not. In the event, if the Court below has come to the conclusion that the Advocate Commissioner report is liable to be scrapped and which case, the petitioners are granted liberty to move an application to reissue the Advocate Commissioner warrant.

9. With the above observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RTI)

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/ /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

The Principal Subordinate Judge, Kumbakonam.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-11322[F] dated 10/03/2022)

+1 CC to M/s.I.SUTHAKARAN, Advocate (SR-11005[F] dated 10/03/2022)

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TP (CO)

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