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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.2487 of 2017
and
C.M.P(MD).No.11727 of 2017

Mydeen Abdul Khader ... Petitioner

versus

Kasali Maraikkayar ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 23.10.2017 made in I.A.No.440 of 2017 in O.S.No.490 of 2012 on the file of the Additional District Munsif Court, Tuticorin.

For Petitioner : Mr.G.Mohankumar

For Respondent : Mr.M.P.Senthil

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ORDER

This Civil Revision Petition has been filed as against the order dated 23.10.2017 passed in I.A.No.440 of 2017 in O.S.No.490 of 2012 by the Additional District Munsif Court, Tuticorin.

2. The learned counsel appearing for the petitioner submits that he petitioner is the defendant in the suit in O.S.No.490 of 2012 on the file of the Additional District Munsif Court, Tuticorin. The Advocate Commissioner was appointed on the application filed by the respondent/plaintiff and he has submitted his report on 27.04.2017. Thereafter, the petitioner/defendant has filed his objection stating that the Advocate Commissioner has taken measurement only from the plaintiff's property and not from his property and the measurements are not taken properly. Hence, he has filed an application in I.A.No.440 of 2017 for re-measurement of the property by the same Commissioner. However, without considering the objections filed by the petitioner/defendant, the trial Court has dismissed the said application.

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3. The learned counsel appearing for the petitioner further submits that the petitioner herein/defendant, in his written statement, has categorically disputed the extent of the 1st schedule property and unless the property of the respondent is measured as per the documents, the alleged encroachment made by the respondent cannot be ascertained. To find out the encroachment in the common pathway, the Commissioner has to measure the petition mentioned property and thereafter, identify the alleged encroachment, if any, in the first schedule property. The request of the petitioner is only for re-issuance of Commissioner's warrant, so that, the error in the measurement could be rectified.

4. The learned counsel appearing for the respondent submits that the Advocate Commissioner has correctly measured the property of the defendant and filed his report. Since the Commissioner's report reveals the encroachment made by the petitioner/defendant, the petitioner, in order to evade the trial, has taken out this petition. Hence, he prays for the dismissal of this petition.

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5. This Court considered the rival submissions made on both sides and perused the materials available on record.

6. The respondent/plaintiff has filed a suit for declaration and permanent injunction and he has taken out an application in I.A.No.313 of 2015 for appointing the Advocate Commissioner. The trial Court has also allowed the application filed by the respondent and the Advocate Commissioner has measured the property with the help of a Surveyor and he filed his report on 27.04.2017. Thereafter, the evidence of the plaintiff is closed and the evidence of the petitioner herein/defendant has commenced. At this stage, the petitioner has taken out the application in I.A.No.440 of 2017 for re-issuance of Commissioner's warrant and scrap the Commissioner's report.

7. It is seen from the records that the Advocate Commissioner has taken measurement from the property of the petitioner with the help of the Surveyor. Therefore, if the petitioner is having any grievance with regard to the report filed by the Advocate Commissioner, he can raise all the grounds

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before the trial Court. The trial Court is not going to decide the matter based upon the report of the Advocate Commissioner alone. Hence, this Court is not inclined to interfere with the order passed by the Additional District Munsif Court, Tuticorin, in I.A.No.440 of 2017 in O.S.No.490 of 2012.

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

08.07.2022

ssb
Index : Yes / No
Internet: Yes / No

To
Additional District Munsif Court, Tuticorin.

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B.PUGALENDHI, J.

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