



WEB COPY



C.R.P.No.460 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.No.460 of 2021
C.M.P.No.4041 of 2021

E.P.Rajendran

...Petitioner

Vs.

1. V.Krishnan
2. Angammal
3. Kuppan

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.01.2020 in I.A.No.385 of 2019 in O.S.No.264 of 2010 on the file of the learned District Munsif, Palacode.

For Petitioner : Mr.P.R.Krishnaraj

For Respondents : Mr.R.Selvakumar

ORDER

The present Civil Revision Petition has been filed to set aside the fair and decreetal order dated 24.01.2020 in I.A.No.385 of 2019 in O.S.No.264 of 2010 on the file of the learned District Munsif, Palacode.



C.R.P.No.460 of 2021

WEB COPY

2. The brief facts of the case in nutshell are as follows:-

The petitioner is the plaintiff and the respondents are the defendants in the suit in O.S.No.264 of 2010. The said suit is filed for declaration and permanent injunction restraining the respondents / defendants not to interfere with petitioner's peaceful possession of the property. Pending Suit, I.A.No.1265 of 2010 was filed by the petitioner for appointing advocate commissioner for measuring the suit property with the help of the surveyor and accordingly, the Advocate commissioner was also appointed. The said advocate commissioner has filed his report stating that the suit property differs with the revenue records, and hence property cannot be measured, thus, the court below has closed the said application. The petitioner, again, filed I.A.No.385 of 2019 stating that unless the suit property is measured based on the documents available with the petitioner, it would be put to serious loss and injury. The said I.A.No.385 of 2019 is dismissed, as against the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner would submit that that the initially an advocate commissioner was appointed for the purpose of measuring the suit property and the said application has been closed based on a report filed by the advocate commissioner without measuring the suit



C.R.P.No.460 of 2021

property. The court below failed to consider the patta issued by the revenue authorities is in favour of the petitioner for Survey No.326/1E and has prematurely concluded that the land could not be measured based on the documents submitted by the petitioner, hence pleaded to set aside the order of the court below.

4. Per contra, it is the contention of the respondents that the petitioner has mentioned S.No.326-1E in the plaint and further prayed to measure the suit schedule property as per the documents of the petitioner, therefore, the Advocate commissioner has mentioned that suit schedule property differs with the revenue records, therefore, the petition, seeking to appoint another advocate commissioner, is not valid in the eye of law and the court below has rightly dismissed the same.

5. Heard the learned counsel on either sides and perused the documents placed on record.

6. On going through the order passed by the court below as well as the pleadings and submissions made on either side, it is seen that the petitioner / plaintiff initially filed I.A.No.1265 of 2010 for appointment of advocate commissioner. The Advocate Commissioner was appointed by the



C.R.P.No.460 of 2021

court below on 23.11.2010 and on 25.01.2018, the advocate commissioner has filed the report. On account of the same, the said petition was closed.

Thereafter, nearly after a period of 1 ½ years, the petitioner has come up with a petition seeking a direction to appoint another advocate commissioner, since the earlier advocate commissioner has mentioned in the report that when the village administration officer along with the local surveyor verified the revenue records, the suit mentioned property differs from the revenue record. In the said petition, the petitioner has sought to subdivide the property, identify the encroachments and mark the same, as per the measurements given in the documents of the petitioner. Moreover, the court below has stated that the petitioner has mentioned in the plaint that the suit schedule property is situated in S.No.326 1E, however, in the petition seeking to appoint advocate commissioner, the petitioner has sought to measure the property as per the details given in his documents, hence the court below rightly dismissed the same.

7. It is relevant to note that the petitioner has not questioned / challenged the report of the advocate commissioner, which was filed earlier by the said Advocate Commissioner or proceeded to the revenue authorities. Again, in the year 2019, the petitioner has filed another petition for sub dividing the properties, as per the documents available with the



C.R.P.No.460 of 2021

petitioner and to find out the encroachments made by the other party. The same cannot be done, at this juncture and the petitioner cannot fill up the lacuna by appointing another advocate commissioner, when already an advocate commissioner filed the report that the measurement mentioned in the document of the petitioner differs from the revenue records.

8. Considering the submissions and the documents produced by the learned counsel on either sides and taking note of the fact that already an advocate commissioner was appointed and report was filed as early as on 25.01.2018 stating that suit schedule property differs from the revenue record and nearly after a period of 1 ½ years, the petitioner has filed a petition to appoint another advocate commissioner, which is nothing but delay in tactics and therefore, the order passed by the court below does not warrant any interference in the hands of this Court and the present Civil Revision Petition is liable to be dismissed.

In view of the above, the present Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

06.02.2023



C.R.P.No.460 of 2021

Index:Yes/No

Internet:Yes/No

Speaking / Nonspeaking order
ssd

To

The District Munsif, Palacode.



WEB COPY



C.R.P.No.460 of 2021

V.BHAVANI SUBBAROYAN J.

ssd

**C.R.P.No.460 of 2021
C.M.P.No.4041 of 2021**

06.02.2023



WEB COPY



C.R.P.No.460 of 2021