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C.R.P.No.2746 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2746 of 2019
& C.M.P.No.18156 of 2019

1.Tmt.Valliammal
2.M.Chandrasekaran
3.M.Govindaswamy

.. Petitioners

VS

1.Tmt.Parvathi
2.Tmt.Bhuvaneshwari
3.M.Gopalakrishnan
4.Jayanthi

5.The Superintending Engineer,
Chennai Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chindradripet, Chennai – 600 002.

6.The Assistant Engineer,
Highways Department (Construction),
Thirukazhukundram,
Kanchipuram District.

.. Respondents

Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 05.01.2019 in I.A.No.252 of 2017 in O.S.No.18 of 2009 on the file of the District Munsif cum Judicial Magistrate, Thirukazhukundram.

For Petitioner : Mr.S.Natana Rajan

For Respondents : Mr.K.Govi Ganesan for R1 to R4
Ms.S.Deepika for R5
Mr.B.Tamil Nidhi, AGP (CS)
for R6

ORDER



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This revision arises against an order passed in I.A. No.252 of 2017 in O.S.No. 18 of 2009 on the file of the District Munsif cum Judicial Magistrate, Thirukazhukundram.

2. O.S.No.18 of 2009 was filed for permanent injunction by respondent nos. 1 to 4. In the said suit, an application was taken out in I.A.No.92 of 2009 for appointment of an Advocate Commissioner. In the said application, the Advocate Commissioner visited the suit property and submitted a report on 13.11.2010.

2.1 I have to note that the first report that was filed by the Advocate Commissioner was after he had surveyed the property along with a qualified surveyor. Yet again, the Advocate Commissioner revisited the property and submitted a report on 28.01.2012.

2.2 After a lapse of nearly six years, an application was taken out to scrap the report filed by the Advocate Commissioner. This petition was dismissed on the ground that the report had been filed as early as in 2012 and no objection had been made to the same. Challenging the same, the present revision has been filed.



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3. Heard the learned counsel on either side and perused the materials available on record.

4. The defendants are the petitioners before me. It is only a suit for injunction filed at the instance of respondent nos. 1 to 4. In order to substantiate their case, they have sought for appointment of an Advocate Commissioner. The Advocate Commissioner so appointed has visited the suit property and filed two reports. To both the reports, objections have not been filed.

5. Mr.S.Natana Rajan, learned counsel appearing for the petitioner would vehemently contend that the Advocate Commissioner has not done his job properly and the report filed by him is insufficient. It was pointed out by me to the learned counsel that even an objection had not been filed by the defendant nos. 3 and 4. In such circumstances, especially after a period of six years, I am not inclined to scrap the report.

6. Scrapping of the report is not a matter of right. The petitioner will have to demonstrate that the report of the Advocate Commissioner is palpably erroneous or is contrary to the procedures contemplated under Order 26 of CPC.



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7. Being a suit for injunction, the respondent nos. 1 to 4 have to prove before the Court that they were in lawful possession and enjoyment of the property on the date of presentation of the plaint. An Advocate Commissioner cannot be appointed for the purpose of finding out who is in possession of the property. Consequently, I am not inclined to interfere with the order passed by the trial Court.

8. Nonetheless, since learned counsel for the petitioner pleads that the report itself is insufficient, I deem it fit to grant four weeks' time to the petitioner to file his objections to the reports dated 13.11.2010 and 28.01.2012. It is for the Court to decide whether the reports are in fact helpful for elucidation of the matter in issue. If after filing of the objections, the petitioner still feels that they have to bring out the insufficiencies in the report, it is always open to them to cross-examine the Advocate Commissioner.

9. With the above observations, this civil revision petition stands dismissed. The order passed by the trial Court in I.A.No. 252 of 2017 in O.S.No. 18 of 2009 dated 05.01.2019 has been confirmed. No costs. Connected miscellaneous petitions are closed.



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Index:Yes/No
Neutral Citation:Yes/No
ssm

To

The District Munsif cum Judicial Magistrate, Thirukazhukundram.



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V. LAKSHMINARAYANAN,J.

ssm

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