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C.R.P.No.3117 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 3117 of 2023

and

C.M.P.No.19311 of 2023

S.Umarani

. . . Petitioner

Versus

- 1.M.Shanmugam
- 2.C.R.Swaminathan
- 3.Sampooranam
- 4.Vimala
- 5.Indira
- 6.Sundari
- 7.Aksiya
- 8.E.K.Palanisamy
- 9.Umasankara
- 10.E.Rajeswari.

. . . Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and final order dated 19.06.2023 passed in I.A.No.4 of 2023 in I.A.No.912 of 2016 in O.S.No.709 of 2015 on the file of the Principal District Munsif Court, Erode.

For Petitioner : Mr.S.Kaithamalai Kumaran



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ORDER

The petitioner/1st defendant has filed the present revision petition challenging the order dated 19.06.2023 passed in I.A.No.4 of 2023 on the file of the Principal District Munsif Court, Erode, which was filed under Section 151 Cr.P.C to scrap the report and plan of the Advocate Commissioner in I.A.No.912 of 2016 in O.S.No.709 of 2015.

2. The learned counsel for the petitioner/first defendant submitted that respondents 1 to 7 herein/plaintiffs have filed the suit in O.S.No.709 of 2015 seeking for declaration and mandatory injunction against the defendants. Pending suit, the plaintiffs have filed an interlocutory application for appointment of an Advocate Commissioner in I.A.No.519 of 2016 and the same was allowed. Challenging the said order, the petitioner/first defendant filed C.R.P.(PD).No.2738 of 2016 before this Court. This Court vide order dated 15.6.2021 partly allowed the petition and directed the Advocate Commissioner to inspect the schedule property in R.S.No.430/2, 430/3 , 430/4 (Old. S.No.490-A) Erode Village and measure it with the help of a qualified surveyor and also set aside the direction already given in I.A.No.519 of 2016 with regard to the encroachment. However, the Advocate Commissioner went beyond the scope of the warrant and filed a report by earmarking the specific areas in various



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colours with the help of Taluk Sub Inspector, Erode, based on the original prayer in I.A.No.519 of 2016. Hence, the petitioner filed I.A.No.4 of 2023 to scrap the report and plan of the Advocate Commissioner. The trial Court without considering the factual aspects dismissed the application. Hence, the petitioner/first defendant has filed the present revision petition.

3. Heard Mr.S.Kaithamalai Kumaran, learned counsel for the petitioner and perused the records.

4. On a perusal of the records, it is seen that this Court vide order dated 15.6.2021 in C.R.P.(PD).No.2738 of 2016 directed the Advocate Commissioner to inspect the schedule of property in R.S.No.430/2, 430/3, 430/4 (Old. S.No.490-A) Erode Village and measure it with the help of the qualified surveyor and file a report before this Court. As per the directions of this Court, the Advocate Commissioner measured the said suit property including its sub divisions, as per the revenue records, and DGPS method and submitted a report. It is seen from paragraph No.2 of the Advocate Commissioner's report that the Advocate Commissioner noted down the schedule of property in R.S.No.430/2, 430/3, 430/4 (Old. S.No.490-A) Erode Village with different colours, only to differentiate the survey numbers.



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5. The main contention raised by the learned counsel for the petitioner/first defendant that there is a classification made by the petitioner/first defendant regarding R.S.No.430/3 Pt-14.35 cents and R.S.No.430/3 Pt-11.21 cents, which were coloured as Orange and Yellow. The Advocate Commissioner has not explained in his report about these two colours and hence, this has to be scrapped from the report.

6. This Court perused the order passed by the trial Court and also considered the submissions made by learned counsel for petitioner. This Court is of the view that it would be sufficient, if the Advocate Commissioner files an additional report explaining the colours given to the lands in the report, as the measurements are done by DGPS method with accuracy and the same shall be considered by the trial Court.

7. In view of the above, this Civil Revision Petition is disposed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.08.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

The Principal District Munsif,
Erode.



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V.BHAVANI SUBBAROYAN, J.,

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