



C.R.P.No.46 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM:

THE HON'BLE MR.JUSTICE S.M. SUBRAMANIAM

C.R.P.No.46 of 2023
and
C.M.P.No.428 of 2023

Krishnan

... Petitioner

Versus

Vijimol

... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 10.09.2022 made in I.A.No.1 of 2021 in I.A.No.3 of 2019 in O.S.No.484 of 2019 on the file of the I Additional District Munsif Court, Salem.

For Petitioner : Mrs.Zeenath Begum

For Respondent : No appearance

ORDER

The Civil Revision Petition has been filed challenging the fair and decretal order dated 10.09.2022 made in I.A.No.1 of 2021 in I.A.No.3 of 2019 in O.S.No.484 of 2019 on the file of the learned I Additional District Munsif Court, Salem.



2.The revision petitioner had instituted a suit for declaration and mandatory injunction. During the pendency of the suit, the revision petitioner filed I.A.No.3 of 2019 for appointment of an Advocate Commissioner. The Trial Court appointed an Advocate Commissioner, who in turn conducted an inspection and submitted his final report.

3.The grievances of the revision petitioner is that the Advocate Commissioner has failed to measure the western wall in the suit schedule property and in order to establish the length of the wall, the revision petitioner filed an interlocutory application in I.A.No.1 of 2021 to re-visit the property and take measurement regarding the western wall by the Advocate Commissioner. The said interlocutory application in I.A.No.1 of 2021 filed by the revision petitioner was dismissed by the Trial Court on the ground that the Surveyor report and the Advocate Commissioner report cohesively pointed out that the suit property was measured through fixing of the F-line. Thus, the report of the Advocate Commissioner cannot be thrown out on the reason that it does not have the measurement of G-line. The Trial Court further proceeded by stating that even assuming that if the report is tainted with misfeasance then the petitioner is expected to file a petition to strike off the report of the Advocate Commissioner. Contrarily, the petitioner cannot seek further direction for



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re-visiting the property to conduct the further measurement of the western wall or otherwise.

4.An Advocate Commissioner is to be appointed in a suit only if the Trial Court gets any doubt regarding the issues or facts. It is to be appointed for the purpose of clarifications or removing certain doubts or difficulties while deciding the issues raised between the parties. The Court cannot appoint an Advocate Commissioner for the purpose of aiding either of the parties to secure evidence to establish their respective cases. Party approaching the Court must establish the case with documents and evidences. They cannot be allowed to collect evidence through Advocate Commissioner for the purpose of establishing their case. Thus, the Advocate Commissioner is to be appointed at the instances of the Court for the purpose of removing any difficulty that arises while deciding the issues raised between the parties, but not otherwise. The practice of appointing an Advocate Commissioner indiscriminately for the purpose of collecting evidence by the parties at no circumstances be encouraged by the Court.

5.In the present case, the Advocate Commissioner has already been appointed, who in turn inspected the property and submitted his report. Thus,



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the revision petitioner has to raise objections, if any, on the report and establish his case with reference to the documents and evidences available. Thus, the Interlocutory Application filed for re-visiting the property by the Advocate Commissioner is not based on sound reasons and this Court, did not find any perversity or infirmity in the findings of the Trial Court.

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

11.01.2023

Index: Yes
Internet: Yes
Neutral Citation Case: Yes
sp/skr

To

1. The I Additional District Munsif Court,
Salem.
2. The Section Officer,
VR Section,
Madras High Court.



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S.M. SUBRAMANIAM, J.,

sp

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