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C.R.P.(MD)No.908 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.908 of 2021

and

C.M.P.(MD)No.5100 of 2021

1.Krishnan, S/o.Padmanabhapillai
2.Maheswari, W/o.Krishnan

.. Petitioners

Versus

1.Madhavamony, S/o.Padmanabhapillai
2.M.Padmakumar, S/o.Madhavamony

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition and set aside the order and decreetal order in I.A.No.195 of 2015 in O.S.No.194 of 2012, on the file of the Additional District Munsif Court, Padmanabhapuram, dated 01.04.2021.

For Petitioners : Mr.V.M.Balamohan Thambi

For Respondents : Mr.K.N.Thambi
for Mr.K.Sreekumaran Nair

ORDER

This Civil Revision Petition has been filed to set aside the order and decreetal order, dated 01.04.2021, passed in I.A.No.195 of 2015 in O.S.No.194 of 2012, on the file of the Additional District Munsif Court, Padmanabhapuram. By the impugned



order, the learned Additional District Munsif, Padmanabhapuram, has appointed an Advocate Commissioner to give a report.

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2.The petitioners are the defendants in O.S.No.194 of 2012 before the Additional District Munsif Court, Padmanabhapuram. The above suit has been filed by the respondents for a declaration of title and for a permanent injunction. In the suit, the respondents had earlier filed I.A.No.367 of 2013 under XXVI Rule 9 of C.P.C.

3.The Trial Court had appointed an Advocate Commissioner pursuant to order passed in I.A.No.367 of 2013. The Advocate Commissioner had also given a report on 11.10.2014. As per the Sketch attached to the report, the property of the respondents/plaintiffs was identified as "A, B, C and D", which was far away from the lands of the petitioners. It is therefore submitted that despite the report of the Advocate Commissioner, the Court has once again appointed an Advocate Commissioner at the behest of the respondents, vide the impugned order dated 01.04.2021 in I.A.No.195 of 2015.

4.It is submitted that the impugned order passed by the learned Additional District Munsif, Padmanabhapuram, is contrary to the following decisions of this Court:-



(i) **Veppanathar alias Karuppannan and another vs. Kaliappan** reported **2000 (III) CTC 78**

(ii) **Hotel Blue Star through its Partners, S.Nambinarayanan and another vs. S.Raman Reddiar and another** reported in **2003 (3) MLJ 666**.

(iii) **Muslim Middle School, Rep. by its Secretary vs. Vedavalli Ammal Trust, Rep. by its President** reported **2005 (1) MLJ 577**.

5.It is submitted that it is open for the respondents to summon the Advocate Commissioner, who gave the report dated 11.10.2014, to give evidence, although he may have left the profession. It is submitted that the report filed by him on 11.10.2014 cannot be ignored. It is therefore prayed that the impugned order be set aside.

6.Per contra, the learned counsel for the respondents submits that the report furnished by the Advocate Commissioner on 11.10.2014 is contrary to the averments in Paragraph No.5 of the written statement filed by the petitioners, which reads as under:-

"5. In fact the plaintiffs' property lies further west of Ramachandran's property and its immediate western property belongs to Sabarison, and its immediate northern property belongs to Murugan and its immediate southern properties belong to Sabariasan and Sarojini and the above said plaintiffs' property is the westernmost portion in resurvey No. 769/15."



7. Whereas in the report dated 11.10.2014, the property of the respondents has been shown in the western side. That apart, it is submitted that the Advocate Commissioner, who gave the report on 11.10.2014, quit the profession and is not available to give statement and explain his report and therefore, no purpose for summoning the person, who is no longer practicing to give his opinion before the Court. That apart, despite best efforts to summon the Advocate Commissioner, the Advocate Commissioner is not willing to appear. Hence, a necessity arose to have a fresh Advocate Commissioner appointed under Order XXVI Rule 9 of C.P.C.

8. In support of his submissions, the learned counsel for the respondents relied on the following decisions of the Hon'ble Supreme Court as well as this Court:-

(i) **Ram Lal and others vs. Salig Ram and others** reported in **2019 (8) SCJ 571**

(ii) **Veppanathar alias Karuppannan and another vs. Kaliappan** reported in **2000 (III) CTC 78**

9. That apart, the learned counsel for the respondents filed a copy of the objections that was filed to the report of the Advocate Commissioner, dated 11.10.2014 on 19.01.2015.



10.I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondents.

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11.The Advocate Commissioner has obviously given a confusing report contrary to the purported admission in Paragraph No.5 of the written statement of the petitioners. The Trial Court is seized of the dispute and therefore, the Trial Court is required to enquire into the same and arrive at a correct conclusion.

12.A fresh report from an Advocate Commissioner would be just and necessary, as there is no point in summoning the person, who is no longer practicing before the Court. Therefore, I do not find any merit in the challenge to the impugned order. Consequently, the present Civil Revision Petition is liable to be dismissed and accordingly, it is dismissed. The Advocate Commissioner, who has been appointed pursuant to the impugned order shall file his report before the Additional District Munsif Court, Padmanabhapuram, within a period of 30 days from the date of receipt of a copy of this order. Both the petitioners and the respondents shall inform the learned Advocate Commissioner, who has been appointed pursuant to the impugned order. The Trial Court shall thereafter dispose the suit as expeditiously as possible, preferably, within a period of nine months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

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The Additional District Munsif,
Padmanabhapuram.



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C.SARAVANAN, J.

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Order made in
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