



C.R.P(MD)No.1055 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2023

CORAM

THE HON'BLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1055 of 2022

and

C.M.P(MD)No.4227 of 2022

Rangasamy

... Revision Petitioner

Vs.

1.Kaliyamoorthy

2.Shanmugam

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.01.2022 in I.A.No.408 of 2020 in I.A.No.222 of 2007 in O.S.No.103 of 2007 on the file of the Principal District Munsif Court, Thanjavur.

For Petitioner : Mr.A.Sivasubramanian

For Respondents : No Appearance

ORDER

The Civil Revision Petition has been filed to set aside the fair and decreetal order dated 10.01.2022 in I.A.No.408 of 2020 in I.A.No.222 of



C.R.P(MD)No.1055 of 2022

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2007 in O.S.No.103 of 2007 on the file of the Principal District Munsif Court, Thanjavur.

2. The petitioner herein is the plaintiff in O.S.No.103 of 2007. The above suit is filed for declaration of title and delivery of possession. During pendency of the suit, the petitioner has filed I.A.No.222 of 2007 for appointment of Advocate Commissioner to inspect the suit property and report the encroachment made by the respondents/defendants. The said application was allowed and Advocate Commissioner was also appointed to inspect the suit property and filed his report and plan. According to the revision petitioner, the report filed by the Advocate Commissioner did not disclose the details of encroachment made by the respondents/defendants in the first item of the suit property. It is further submitted that, the Surveyor report with regard to item-I of the suit schedule property, clearly indicates the extent as 0.045.0 ares (111 cents) as per the sketch and whereas the physical extent was only 0.38.0 ares (94 cents). Despite the averments made in the plaint that the remaining portion of land was encroached by the defendant and inspite of the memo submitted by the petitioner to the Advocate Commissioner that



C.R.P(MD)No.1055 of 2022

Survey No.144/5B has to be measured as per the sketch shown in the Village Register, the advocate commissioner failed to measure the same and filed a defective report. Hence, the petitioner filed the present petition in I.A.No.408 of 2020 calling for a supplementary report after measuring the Survey No.144/5B which was erroneously dismissed by the trial Court, which is now under challenge.

3. The learned counsel appearing for the revision petitioner would submit that, if the trial is proceeded based on the defective report submitted by the Advocate commissioner, it would defeat the purpose of appointing an Advocate Commissioner and it would also cause serious injustice to the petitioner.

4. In spite of opportunity given to the respondents, the respondents remained absent.

5. As per settled law appointment of Advocate Commissioner- where there is an allegation of encroachment of land, an Advocate Commissioner can be appointed for local investigation as mere oral



C.R.P(MD)No.1055 of 2022

evidence will not aid either party to decide the issue of encroachment.

No doubt, the report of Advocate Commissioner constitutes evidence in case where Commissioner was appointed and it forms part of record.

The Court has to apply its mind whether report is defective or deficient and can order further enquiry if the Court feels dissatisfied with proceedings of Commissioner. The specific plea of the petitioner/plaintiff is that as per the Village Register, the suit property is in larger extent than what is now in his enjoyment. Therefore, according to the petitioner, the defendants have encroached his property. Only by measuring Survey No.144/5B, the said encroachment can be found out. But the Advocate Commissioner failed to measure the said Survey number and therefore, the alleged encroachment cannot be elucidated and there is a deficiency in the report of the Commissioner. Therefore, re-issuance of warrant for proper measurement of property by same Commissioner would not cause any prejudice to other side. As per pleadings in the plaint, there was encroachment by the defendants. The same cannot be established without clear report by Advocate Commissioner. No prejudice would be caused if warrant was re-issued to same Commissioner, directing Commissioner to file additional report



C.R.P(MD)No.1055 of 2022

WEB COPY

by measuring the suit property with the assistance of qualified Surveyor on basis of memo furnished by the petitioner to Advocate Commissioner at the time of inspection.

6. In view of the above discussions, this Civil Revision Petition stands allowed and the order passed by the learned Principal District Munsif, Thanjavur, in I.A.No.408 of 2020 in I.A.No.222 of 2007 in O.S.No.103 of 2007, dated 10.01.2022 is set aside. Considering the fact that the suit is of the year 2007, this Court directs the learned Principal District Munsif, Thanjavur, to dispose of the main suit in O.S.No.103 of 2007 on merits and in accordance with law, without any unnecessary adjournments, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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C.R.P(MD)No.1055 of 2022

K.GOVINDARAJAN THILAKAVADI, J.

RM/CP

To

- 1.The Principal District Munsif,
Thanjavur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P(MD)No.1055 of 2022

18.08.2023