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C.R.P(MD)No.1730 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1730 of 2023

and

C.M.P(MD)No.8624 of 2023

1.P.Sivakumar

2.Vasuki

... Petitioners/Petitioner/
Appellants/Defendants

Vs.

R.Natarajan

... Respondent/Respondent/
Respondent/Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 21.04.2023 made in I.A.No.1 of 2022 in A.S.No.25 of 2022 on the file of the Sub-Court, Theni, set aside the same and allow this Civil Revision Petition.

For Petitioners
For Respondent

:Mr.K.Appadurai
:Mr.S.Sivathilakar

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 21.04.2023 passed in I.A.No.1 of 2022 in A.S.No.25 of 2022 by the



Sub-Court, Theni.

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2. According to the petitioners, the respondent/plaintiff filed a suit in O.S.No.46 of 2016 for declaration of title and for recovery of possession in “B” schedule property and for permanent injunction. During the pendency of the said suit, the respondent/plaintiff filed an application under Order 26 Rule 9 and Section 151 of C.P.C., for appointment of an Advocate Commissioner to measure the suit property and to identify the encroachment as per the title deed of the respondent. Without knowing the recitals in Ex.A1 title deed, the Advocate Commissioner along with surveyor filed their report.

3. The said report was objected on the side of the revision petitioners by stating that the suit property was not properly measured. However, the contention of the revision petitioners was rejected and moreover the Advocate Commissioner, Surveyor along with defendants for examining in respect of the report filed by the Advocate Commissioner. The said suit was decreed by the trial Court. Against which, the revision petitioner herein preferred an appeal in A.S.No.25 of 2022 and during the pendency of the appeal suit, the revision petitioner took out another application in I.A.No.1 of 2022 before the Sub-Court, Theni, for appointment of an Advocate



Commissioner, to survey and measure the suit property.

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4.The said application was resisted on the side of the respondent/plaintiff by stating that without scraping the earlier report, fresh application for appointment of an Advocate Commissioner for the second time, is not maintainable.

5.The Appellate Court, considering the arguments put-forth on either side, dismissed the said application stating that without scraping the earlier report, the petition is not maintainable. Accordingly, dismissed the petition. Against which, the present revision is filed.

6.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

7.The learned counsel appearing for the revision petitioners submitted that the Advocate Commissioner, Revenue Officials and the trial Court failed to peruse the recitals of Ex.A.1 document, which disclose the fact that the respondent/plaintiff has purchased 5 cents and there is a pre-condition in the schedule to Ex.A.1 that he cannot put up construction in the entire



property, after leaving two feet on northern side from north-south. He further submitted that the respondent/plaintiff is violated the aid recitals without leaving two feet on northern side, put up a compound wall and made a false pleading in the suit as if two feet pathway is beyond the compound wall of the respondent/plaintiff. Due to which, a criminal complaint was also preferred by the revision petitioners against the respondent/plaintiff in C.C.No.310 of 2016 on the file of the learned Judicial Magistrate, Theni, in which, he was convicted for encroaching into the property of the revision petitioners and for causing damage to the property. The learned counsel further submitted that the trial Court failed to see that the encroachment made by the respondent/plaintiff as pleaded by the petitioners herein in a proper perspective way and without analyzing the requirement of report of the Advocate Commissioner, erroneously dismissed the application filed by the revision petitioners.

8.On the other hand, the learned counsel appearing for the respondent/plaintiff would contend that since the trial Court relied upon the report of the Advocate Commissioner in passing the judgment and decree, it was inappropriate and unjust to scrap report of the Advocate Commissioner and appoint new Advocate Commissioner in the Appellate Court. To support his contention, he has relied upon the decision of this Court reported in



(2020)1 MLJ 844 in *Subbaiah-vs-Sivaperumal*.

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9.As pointed out by the learned counsel appearing for the respondent/plaintiff that based on the earlier report of the Advocate Commissioner, judgment and decree was passed by the trial Court, at that time, the revision petitioners have not taken any steps to scrap the report filed by the Advocate Commissioner. Therefore, it is irregular and illegal to appoint a second Advocate Commissioner before scrapping the report of the first Advocate Commissioner report and it is always open to the petitioners to file an appropriate petition for re-issuing the warrant to the first Advocate Commissioner.

10.Considering the above facts, the Court below has rightly dismissed the application and does not warrant any interference by this Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.07.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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K.GOVINDARAJAN THILAKAVADI, J.

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To

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- 1.The Sub-Court,
Theni,
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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and
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