



C.R.P.(MD) No.1567 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.1567 of 2021

and

C.M.P.(MD) No.8570 of 2021

Dhanalakshmi

... Petitioner

Vs.

Vaidheki @ Vasantha

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.4 of 2021 in O.S.No.7 of 2019 on the file of the District Munsif Court, Palani, dated 06.09.2021.

For Petitioner : Mr.D.Venkatesh

For Respondent : No appearance

ORDER

This Civil Revision Petition is preferred against the impugned order dated 06.09.2021 passed in I.A.No.4 of 2021 in O.S.No.7 of 2019 on the file of the District Munsif Court, Palani.



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2. The petitioner is the plaintiff in O.S.No.7 of 2019. The said suit was filed by the petitioner for declaration of title, permanent injunction and recovery of possession of the suit schedule property. During the pendency of the suit, the petitioner has moved an application in I.A.No.25 of 2019 before the District Munsif Court, Palani, for appointment of an Advocate Commissioner to inspect the property, to note down the physical feature of the property and measure the same as per the Title Deeds of the respective parties with the assistance of Village Administrative Officer and Surveyor. The Trial Court has allowed the said I.A.No.25 of 2019 by appointing an Advocate Commissioner. The Advocate Commissioner inspected the property and filed a report.

3. According to the petitioner, the Advocate Commissioner, without considering the Title Deed of the petitioner, has inspected the property only based on the Title Deed of the respondent and the Revenue Records. Aggrieved by the same, the petitioner moved an another application in I.A.No. 4 of 2021 under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 for appointment of an Advocate Commissioner for the second time to inspect the property of the respective parties and measure the same according to the Title Deed of the respective parties.



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4. The said I.A.No.4 of 2021 was dismissed by the Trial Court *vide* impugned order dated 06.09.2021 stating that the report of the Advocate Commissioner appointed by the Trial Court is sufficient to resolve the issue and the affidavit filed in the support of the I.A. contains bereft of particulars for appointment of Advocate Commissioner afresh to inspect the same property and the petitioner has not taken any steps to scrap the report and sketch filed by the Advocate Commissioner.

5. Aggrieved by the same, the present Civil Revision Petition is filed by the petitioner. The learned counsel appearing for the petitioner would submit that there are many discrepancies found in the Revenue Records and therefore, the measurement made by the Advocate Commissioner based on the Revenue Records is incorrect.

6. It is submitted that to find out as to whether there is an encroachment in the suit schedule property, measurement ought to have been done according to the Title Deeds of the respective parties, but, the Advocate Commissioner has failed to do so. Hence, it is necessary for the petitioner to take out the second application for appointment of an Advocate Commissioner afresh for the same purpose to resolve the issue. It is therefore submitted that the Court



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below has failed to note the fact and erroneously dismissed the said I.A. *vide* impugned order dated 06.09.2021 which is liable to be interfered with.

7. Heard the learned counsel for the petitioner. Perused the evidence on record.

8. On perusing the records, it is noticed that the earlier report of the Advocate Commissioner is not scrapped till now. However, a supplementary report may be called for from the same Advocate Commissioner by re-issuing the warrant to measure the property in dispute as to whether the encroachment is made by either of the parties.

9. Hence, a direction is given to the learned District Munsif, Palani to re-issue the warrant to the same Advocate Commissioner, if available, to measure the property according to the Title Deeds of the parties. Otherwise, the learned District Munsif, is at liberty to appoint another Advocate Commissioner practising on the Civil Side to make a local inspection and measure the property according the Title Deeds of the respective parties. The Trial Court is also at liberty to consider the earlier report and the supplementary report in accordance with law to arrive at a fair adjudication.



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WEB COPY 10. With the above directions, this Civil Revision Petition is disposed of.

No cost. Consequently, connected Miscellaneous Petition is closed.

14.07.2023

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

The District Munsif Court,
Palani.



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K.GOVINDARAJAN THILAKAVADI, J.

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