



C.R.P(MD)No.1102 of 2019(PD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)No.1102 of 2018(PD)

and

CMP(MD)No.4757 of 2018

1.V.Rethinam

2.R.Muthu

... Petitioners / Petitioners /

Respondents / Defendants

.Vs.

1.Karuppaiah (died)

2.Ramakrishnan

3.Madhavan

4.Chidambaram

5.Lakshmi

6.Muthu

7.Savithiri

... Respondents/Respondents/

Petitioners / Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, set aside the fair and decreetal order dated 09.03.2018 made in I.A.No.475 of 2017 in I.A.No.401 of 2012 in O.S.No.111 of 2012 on the file of the District Munsif Cum Judicial Magistrate, Thirumayam and to allow this Civil Revision Petition.



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For Petitioners : Mr.G.Sridharan

For Respondents : Mr.B.Jameel Arasu for R1, R2, R4,
R6 and R7

ORDER

The petitioners are the defendants in O.S.No.111 of 2012. The plaintiffs filed an application in I.A.No.475 of 2017 before the District Munsif Cum Judicial Magistrate, Thirumayam, to appoint an Advocate Commissioner and the same was allowed, in pursuance of which, the Advocate Commissioner also filed a report before the trial Court.

2. The grievance of the petitioners/defendants is that despite giving an objection memo, the Advocate Commissioner has not inspected their property and has not given measurements which alone would show whether there has been any encroachment or not.

3. The learned counsel for the respondents/plaintiffs would submit that the Advocate Commissioner has clearly mentioned in his report that he has confirmed the measurement and fixed the boundary stone 'G', only after ascertaining the same with the revenue records available with the revenue department.



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4. The learned counsel for the respondents/plaintiffs would further submit that it is also brought to his notice that the trial Court has reserved the matter for judgment. However, he would also submit that the application has already been taken out to set aside the *ex-parte* order and the same is pending.

5. It is the specific case of the revision petitioners that the Commissioner has erroneously mentioned that his measurement commenced only from the survey stone marked as 'G'. If the Commissioner had adverted to the memo objections given by the petitioners, then, there would have been clarity with regard to the dispute between the parties.

6. The trial Court dismissed the said application on the ground that the suit is ripe for trial and that the petitioners/defendants have to establish their case through evidence. Under such circumstances, the petition was dismissed.

7. I have heard Mr.G.Sridharan, learned counsel for the revision petitioners and Mr.B.Jameel Arasu, learned counsel for the respondents



1, 2, 4, 6 and 7. I have also perused the records.

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8. The proper procedure to be adopted in such matters is, when an objection has been raised with regard to the report of the Advocate Commissioner, the Court must adjudicate the same, before proceeding with the trial of the judgment.

9. This Court, in ***Vemba Gounder V. Pooncholai Goundar*** reported in ***AIR-1996-Madras-347***, has elaborately dealt with the proper approach to be adopted by the Court, in all such cases of appointment of Advocate Commissioners and their reports. The relevant portion is as follows:

“30. The petitioner has filed objections to the report. According to him, even the suit property is not identified by the Commissioner and he has simply copied a survey plan with the help of a surveyor. If that be so, the petitioner should have taken steps to examine the Commissioner or let in evidence to satisfy the Court below that the report is faulty and the same should be scrapped and the same Commissioner should be directed to file another report or a fresh Commission should be issued, with a direction to locate the property as sought for in the application. No such attempt was made by the petitioner. Even though objections were filed in the year 1994, till the dismissal of the present application, the petitioner did not take any steps in this regard.



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He could have moved the Court below to enter a finding regarding the acceptability or otherwise of the report. I am sure, if such an attempt had been made by the petitioner, the Court below would have rendered a finding on the Report already filed by the Advocate-Commissioner. I have already said that when objection is raised on a Report it is the duty of the trial Court to enter a finding regarding the same before asking the parties to let in evidence on the merits of the case. For the purpose of substantiating their Objections to the Report, probably examination of the Commissioner alone may not be sufficient. Parties may also have to be examined. Only after taking such steps and after arguments, when the Court enters a finding on the Report already filed, if he is aggrieved by the finding, the petitioner can insist upon issuing a second Commission or remit the warrant to the same Commissioner, for curing the defects made mention of in the Objections. Merely accusing the trial Court of not following the procedure is not proper.”

10. In the said judgment, this Court has held that the trial Court ought to have adjudicated the said objections. Instead of that, the trial Court has dismissed the application, despite the specific objection being taken by the petitioners/defendants. Hence, the said order is contrary to the law laid down by this Court in **Vemba Gounder's** case.



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11. In fine, the Civil Revision Petition is allowed and the order dated 09.03.2018 passed in I.A.No.475 of 2017 in I.A.No.401 of 2012 in O.S.No.111 of 2012 on the file of the District Munsif cum Judicial Magistrate, Thirumayam, is hereby set aside. The trial Court has to first arrive at findings with regard to the objections to the Commissioner's report and if necessary, issue a fresh Commission warrant to some other Advocate in the interests of justice and thereafter proceed with the suit in accordance with law. There shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

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

1. The District Munsif cum Judicial Magistrate,
Thirumayam.

2. .The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

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