



CRP(PD)(MD).No.2397 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.08.2023

DELIVERVED ON : 29/09/2023

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(PD)(MD)No.2397 of 2022 and
CMP(MD).No.11591 of 2022

Sankareswaran

: Revision Petitioner / plaintiff

Vs.

M.Subbaiya Nadar

Respondent / defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed by the District Munsif Cum Judicial Magistrate No.I, Srivilliputur, Virudhunagar District in I.A.No.01 of 2021 in O.S.No.123 of 2013 vide its order, dated 05.08.2022.

For Petitioner

:Mr.P. Samuel Gunasingh

Fro respondent

: Mr.P. Ganapathi Subramanian



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ORDER

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This Civil Revision Petition is preferred against the order, dated 05.08.2022, passed in I.A.No.01 of 2021 in O.S.No.123 of 2013, District Munsif Cum Judicial Magistrate No.I, Srivilliputtur, Virudhunagar District.

2. The revision petitioner as the plaintiff has filed the above said suit in O.S.No.123 of 2013 for declaration of title and for permanent injunction.

3. During the pendency of the suit, the petitioner / plaintiff has filed an application in I.A.No.01 of 2021 for appointment of an Advocate Commissioner and the same was dismissed by the trial Court on the ground that the second application is not maintainable and that the application is filed after a lapse of seven years after the dismissal of the earlier application. Aggrieved by the said order, the present revision is prepared.

3. The learned counsel for the revision petitioner would



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contend that it is the specific case of the petitioner / plaintiff that the respondent has encroached the public pathway and put up construction.

But, in the Commissioner's report nothing is mentioned about the said encroachment. If the Advocate Commissioner had measured the suit properties as per the sale deed and other records, he would have noted the said encroachment and that the Wall is not a common wall. The earlier Commissioner's report is bereft of particulars and without measuring the suit properties as per the sale deed, has come to conclusion that wall situated in the Western side of the respondent's property is common wall. Hence, the petitioner was constrained to file an application for appointment of fresh Commissioner for the above properties. However, the trial Court without considering the above facts erroneously dismissed the said application, which calls for interference.

4. On the other hand, the learned counsel for the respondent would submit that it is not necessary to measure the suit property. As per the plaintiff's documents, the Advocate Commissioner had measured the property as per the revenue documents and had filed his report. The petitioner / plaintiff had also made his objection to the report filed by the Advocate Commissioner. The said report was filed in the year 2016.



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Now, when the suit was posted for pronouncing Judgment, the petitioner / plaintiff has come out with the present application only with an intention to drag on the proceedings. Further, in the connected suit in O.S.No.362 of 2014, the petitioner / plaintiff has filed an application in I.A.No.1 of 2021 for appointment of an Advocate Commissioner and the same was also dismissed. The trial Court has considered all the above facts and rightly dismissed the application filed by the petitioner / plaintiff, which calls for no interference.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Admittedly, it is not in dispute that the Advocate Commissioner was already appointed and he had filed his report and plan, for which the petitioner / plaintiff had also submitted his objection in the year 2016. It is also not in dispute that now the suit is posted for pronouncing Judgments. At this stage, the petitioner / plaintiff has come out with the present application for appointment of an Advocate Commissioner. Moreover, the submission made by the respondent / defendant that in the connected suit in O.S.No.363 of 2014 the petition



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filed by the petitioner / plaintiff for appointment of an Advocate Commissioner in I.A.No.1 of 2021 was dismissed by the Court below is not denied on the side of the petitioner / plaintiff. In the earlier application filed in I.A.No.1115 of 2016, the Advocate Commissioner has filed his report and the same is recorded by the Court below. In order to discarded the earlier report, the trial Court has rightly held that even if there is any objection, on the side of the petitioner, he is at liberty to examine the Advocate Commissioner. Therefore, there is no necessity for appointment of an Advocate Commissioner for the 2nd time and moreover, the application is filed after a period of six yeas that too at the stage of disposal of the above suit. Therefore, this Court does not find any infirmity in the order passed by the trial Court.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.09.2023

Index : Yes / No
Internet : Yes/ No
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To

The District Munsif Cum Judicial Magistrate No.I, Srivilliputtur,
Virudhunagar District



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K. GOVINDARAJAN THILAKAVADI, J.,

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