



C.R.P.No.1253 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1253 of 2024

Sridhar

... Petitioner

Vs

V.N.Devadoss

... Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed by the Principal District Munsif, Poonamallee, dated 15.11.2023, dismissing the restoration petition in I.A.No.2 of 2023 in I.A.No.844 of 2017 in O.S.No.567 of 2013.

For Petitioner : Mr.Manoj Sreevalsan

For Respondent : Mr.V.Ayyapparaja

ORDER

The petitioner, second defendant in O.S.No.567 of 2013 had filed

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I.A.No.2 of 2023 to reopen the Interlocutory Application in I.A.No.844 of 2017, which was dismissed by order dated 15.11.2023 without giving proper reason. Hence, the present Civil Revision Petition.

2. The contention of the petitioner is that the respondent/plaintiff had filed a Suit in O.S.No.567 of 2013, for bare injunction. The petitioner and the respondent are the adjacent land owners and there were some dispute between them relating to two boundaries and hence, there is an encroachment of each other properties which is the main allegation. Therefore, the respondent/plaintiff filed the Civil Suit in O.S.No.567 of 2013 for bare injunction.

3.In the said Suit, the petitioner filed I.A.No.115 of 2015 to appoint an Advocate Commissioner along with Taluk Surveyor to identify the petitioner's property and the suit property and to note down physical features and boundaries, which was allowed and appointed an Advocate Commissioner to inspect the property and file a report.

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Thereafter, on 16.09.2016, the Advocate Commissioner after inspection filed a report. At the time, the petitioner/second defendant has raised an objection stating that the Advocate Commissioner had inspected the respondent/plaintiff's property only, but not inspected the petitioner's property. Hence, he had filed I.A.No.844 of 2017, which was allowed initially on 18.09.2018, but the petitioner has failed to take any steps to inspect the property. Therefore, the Advocate Commissioner returned the warrant due to non-cooperation by the petitioner. In the meanwhile during Covid-19 Pandemic, there were restrictions in functioning of the Court and finally, the Lower Court found that the case was kept pending from the year 2013 and the said Application was dismissed on 18.04.2022. As against the said order IA.No.2 of 2023 was filed to restore IA.No.844 of 2017 dated 18.04.2022. The Trial Court held that the petitioner had not adduced, sufficient reason for delay caused and the said application filed after one year from the date of dismissal of IA.No.844 of 2017 and therefore, the Trial Court dismissed the Application.

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4.The contention of the petitioner is that the petitioner/second defendant is not at fault for the delay, the petitioner is ready for cross examination of PW-1 when the Advocate Commissioner is submitted his report, such report has to be confronted with PW-1, but the Trial Court failed to consider the same.

5.Further the learned counsel appearing for the petitioner submitted that in a time bound manner direction can be issued to file a Advocate Commissioner's report within a time stipulated and thereafter the Trial itself can be completed within the stipulated time and therefore, he submitted that the petitioner is not at all reason for delaying the trial.

6.The learned counsel appearing for the respondent submitted that the petitioner's submissions are only in words not in action, the Suit is of the year 2013 and the Advocate Commissioner was appointed and thereafter the property was inspected and report submitted by the

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Advocate Commissioner on 16.09.2016. From the Advocate Commissioner's report it is seen that the suit schedule property inspected in the presence of both the counsels of the parties, Taluk Surveyor, Village Administrative Officer and Village Assistant. At that time, the petitioner raised no objection. Advocate Commissioner report records physical feature of the properties with boundaries.

7.He further submitted that during the inspection, the petitioner raised no objection, gave any request to survey his property, but however after the report was filed, an objection filed immediately stating that his property was not inspected and hence, the report is not complete. The Trial Court on the objection filed and also I.A.No.844 of 2017 filed for re-inspection, which was allowed and thereafter, the same kept pending for almost five years without any progress. Considering the delay and suit is of the year 2013 and PW-1 examined in chief not cross examined and therefore, the Trial Court closed IA.No.844 of 2017. Thereafter I.A.No.2 of 2023, was filed by the petitioner and in

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the said application, the petitioner has not given for what reason I.A.No.844 of 2017 to be reopened.

8. Considering the submissions made by the learned counsel appearing for the both parties and perused the materials placed on record. Admittedly, I.A.No.115 of 2015 filed to appoint an Advocate Commissioner to inspect the petitioner as well as respondent properties. The Advocate Commissioner after inspection filed a report on 16.09.2016. From the report, it is seen that the respondent's properties alone inspected and therefore, the petitioner had filed an objection immediately and thereafter I.A.No.844 of 2017 filed for re-inspection, which was allowed and now the same was dismissed on 18.04.2022. During the year 2020-2022, there has been restriction in functioning of the Courts due to Covid-19 pandemic. Now the petitioner undertakes to cooperate with the Advocate Commissioner to inspect the petitioner's property and further submitted that he shall pay the Advocate Commissioner's fees as directed by the Lower Court immediately within a period of 10 days.

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9. Thereafter the Suit may be disposed without delay. In view of the petitioner undertaking to cooperate with the Advocate Commissioner to inspect his property. This Court is inclined to allow this Revision Petition directing the Advocate Commissioner to file a report within a period of one month from the date of inspection. Thereafter after receipt of the Advocate Commissioner's report, the Trial Court shall complete the proceedings in O.S.No.567 of 2013 within a period of three months from the date of receipt of the Advocate Commissioner's report.

10. In fine, this Civil Revision Petition is allowed and the impugned order is set aside on the above directions. However, there shall be no order as to costs.

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M.NIRMAL KUMAR,J.

Pbn

To

Principal District Munsif, Poonamallee

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