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C.R.P.(PD).No.2591 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.2591 of 2024
and C.M.P.No.13602 of 2024

Srinivasan

... Petitioner

vs

Manoranjitham (Died)

- 1.Anandhi
- 2.Koteswari
- 3.Rajendren
- 4.Sivagami

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the dismissal Order and Decretal Order in I.A.No.5 of 2023 in O.S.No.102 of 2009 dated 19.02.2024 on the file of the Additional District Munsif at Thiruvallur.

For Petitioner : Mr.R.Karunakaran

ORDER

This Civil Revision Petition arises against the order passed by the learned Additional District Munsif at Thiruvallur in I.A.No.5 of 2023 in O.S.No.102 of 2009, dated 19.02.2024.



2. The civil revision petitioner is the defendant in the suit. The cause of action for the suit was that after the purchase of portion of the 'A' schedule property from the predecessor of the plaintiffs, the defendant on 20.11.2008 encroached upon the 'B' schedule mentioned property which forms part of the 'A' schedule property. Hence, the plaintiffs filed a suit for declaration that they are the absolute owners of the suit 'B' schedule property and for a mandatory injunction directing the defendant to hand over the possession of the same.

3. Pending the litigation, an application was taken out for appointment of an Advocate Commissioner. The Advocate Commissioner was directed to measure both 'A' and 'B' schedule properties along with the Surveyor and submit a report. The Advocate Commissioner visited the suit properties and also submitted his report on 30.08.2023. To the said report, detailed objections have been filed by the defendant. Thereafter, he took out the present application for remeasuring the property by way of re-issuance of warrant. This was objected to by the plaintiffs on the ground that the suit schedule properties had been visited several times and three different



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Surveyors had visited the properties at different points of time and have come to a conclusion that there is encroachment. The Surveyor's report has also been annexed along with report of the Advocate Commissioner.

4. The learned Additional District Munsif, Thiruvallur found that the Advocate Commissioner's report along with the Surveyor's report had measured the entire suit properties and had given a report with respect to the extent of the encroachment and therefore, she did not find any necessity to reissue the warrant.

5. Heard Mr.R.Karunakaran, learned counsel appearing for the petitioner.

6. Mr.R.Karunakaran, would submit referring to the Surveyor's report that the Advocate Commissioner had only measured S.No.290/1D1 and not S.Nos.290/1D2 and 290/1C. Therefore, he would state that it is necessary for re-issuance of warrant to the Advocate Commissioner to remeasure the suit properties.



7. A perusal of the schedule annexed to the suit would show that the 'A' schedule property is situated in S.No.290/1D. The encroached area is said to be in S.No.290/1C and is comprised in S.No.290/1D. The specific extents have been given in the schedule. The plan annexed to the Advocate Commissioner's report has been filed in Page No.40 of the typed-set of papers. A perusal of the same shows that the Advocate Commissioner has identified an encroachment on S.No.290/1D1. The subsequent division of the property into several sub-divisions would not mean that the Advocate Commissioner would have to revisit the properties again.

8. As seen from the papers, the properties had been surveyed by three different persons at three different points of time. Thereafter, the Advocate Commissioner, who had been appointed in I.A.No.748 of 2014 had also visited the suit schedule properties and measured both the 'A' and 'B' schedule properties. The schedule of the Advocate Commissioner's report specifically finds that the schedule of properties were measured and area of encroachment had also been identified. The claim that other extents would also have to be measured for the purpose of re-issuance of warrant does not hold water for



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the simple reason that the petitioner has not stated which extent of the properties have to be remeasured. The reasons given in Paragraph No.6 of the learned Additional District Munsif's order are convincing and do not require any interference.

9. Therefore, the Civil Revision Petition is dismissed. In case, the petitioner has any grievance, it is always open to him to summon the Advocate Commissioner and to cross examine him during the course of trial. There shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

19.07.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The Additional District Munsif,
Thiruvallur.



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V.LAKSHMINARAYANAN, J.

dm

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