



C.R.P.(PD).No. 2815 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 2815 of 2024

&

C.M.P. No. 15424 of 2024

Rajendran

...Petitioner

Vs.

Venkatesan

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 21.06.2024 made in I.A.No.169 of 2024 in O.S.No.183 of 2020 on the file of the District Munsif Cum Judicial Magistrate Court, Vikravandi.

For Petitioner : Mr. C.Munusamy

For Respondent : Mr. N.Suresh.



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ORDER

This Civil Revision Petition arises against the order of the learned District Munsif - cum - Judicial Magistrate, Vikravandi in I.A.No.169 of 2024 in O.S.No.183 of 2020 dated 21.06.2024.

2. The plaintiff is the civil revision petitioner. He presented the suit for declaration of his title and for injunction. The said suit was originally presented before the District Munsif, Villupuram as O.S.No.55 of 2012. An application was filed along with the said suit in I.A.No.273 of 2012, for appointment of an Advocate Commissioner. The learned Judge allowed the application ex parte and appointed the Advocate Commissioner on 12.04.2012. Thereafter, the Advocate Commissioner had also filed his report along with a plan on 20.08.2013.



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3. To the said report, the respondent / defendant herein alone filed his objections. The petitioner on 18.11.2013 tendered “*no objection*” for the report. Being dissatisfied with the said report, the respondent / defendant filed an application in I.A.No.1185 of 2015. This petition sought for remitting the warrant to the same Advocate Commissioner and to inspect the property and submit a report along with the help of a surveyor. After contest, this application was allowed and the Advocate Commissioner also filed his report. To the said report, objections were not filed on time.

4. Thereafter, the plaintiff took out two applications in I.A.Nos.168 & 169 of 2024. I.A.No.168 of 2024 was to receive his objections to the report already filed by Advocate Commissioner, pursuant to the orders passed in I.A.No.1185 of 2015. I.A.No.169 of 2024 sought for the relief of scrapping of the report and appoint a fresh Advocate Commissioner. Both the applications came to be dismissed



by order of the Court dated 21.06.2024. Hence, the revision.

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5. Heard Mr. C.Munusamy, for the civil revision petitioner and Mr. N.Suresh, for the respondent.

6. The narration of the aforesaid facts would show that there are two reports filed by the Advocate Commissioners. One pursuant to the order in I.A.No.273 of 2012 and the other in I.A.No.1185 of 2015. To both the reports, the petitioner has not filed his objections. Unless and until parties tender objections and provide reason as to why the Advocate Commissioner's report has to be scrapped, the Court will not pass an order scrapping the report. A perusal of the affidavit shows that there are no reasons given for scrapping of the said report.

7. Be that as it may, the petitioner being the plaintiff in the suit, he is certainly entitled to file his objections to the Advocate Commissioner's report. It is seen that no revision has been preferred by the petitioner / plaintiff as against the order passed in I.A.No.168 of



2024. On account of the procedural mistake committed by the plaintiff, he cannot be penalised. The fact that the objections have been tendered is not in dispute.

8. Order XXVI Rule 9 & 10 of the Code of Civil Procedure empowers a Court not only to permit the parties to object to the Advocate Commissioner's report, but also to permit the parties to the suit to cross examine the Advocate Commissioner, if they are dissatisfied with the report. While confirming the impugned order of the Trial Court, I am inclined to permit the plaintiff to file his objections to the second Advocate Commissioner's report filed pursuant to the order in I.A.No.1185 of 2015. Mr.N.Suresh, has no objection to this course of action.

9. Accordingly, the Trial Court shall take on record the objection already filed by the plaintiff to the report and plan filed by the Advocate Commissioner. Both the parties will be entitled to cross examine the Advocate Commissioner, in case they are dissatisfied with



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the report. The relief with respect to scrapping of the Advocate Commissioner's report is rejected with the above direction.

10. The Civil Revision Petition is disposed of. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The District Munsif Cum Judicial Magistrate Court,
Vikravandi.



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V.LAKSHMINARAYANAN, J.

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