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C.R.P.(PD).No.3682 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3682 of 2024
and C.M.P.No.19982 of 2024

Kulasekaran

.. Petitioner

Versus

Sampath (died)

1. Kamalaveni
2. Senthilkumar
3. Sumithra

.. Respondents

Cause title accepted vide Court order, dated 29.08.2024
made in C.M.P.No.18888 of 2024 in C.R.P.SR.No.109122 of 2024

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order in I.A.No.354 of 2023 in O.S.No.142 of 2020, dated 15.07.2024 on the file of the learned Additional District Munsif, Tindivanam.

For Petitioner : Mr.N.Suresh

ORDER



C.R.P.(PD).No.3682 of 2024

WEB COPY

This Civil Revision Petition arises against the order passed by the learned Additional District Munsif, Tindivanam in I.A.No.354 of 2023 in O.S.No.142 of 2020, dated 15.07.2024.

2. The civil revision petitioner is the plaintiff in the suit. He presented O.S.No.142 of 2020 seeking for the relief of mandatory injunction to remove the encroachment that was allegedly made by the respondents over the common pathway. Pending the suit, he took out an application for appointment of an Advocate Commissioner in I.A.No.454 of 2021. The learned Additional District Munsif was also pleased to appoint an Advocate Commissioner to visit the suit property and submit a report. The Commissioner also submitted a report and the civil revision petitioner filed his objections to the same.

3. It is the grievance of the civil revision petitioner that without measuring the property according to the title deeds of the year 1983, the Advocate Commissioner took a note of the proceeding in I.P.No.20 of 1931 and measured the property. He would plead that the measurements are as per the town survey plan, but, not as per the sale deeds or as per the existing



C.R.P.(PD).No.3682 of 2024

WEB COPY

situation. He adds that on filing of the objections, the said application was closed. Hence, the petitioner took out an application to set aside the report of the Advocate Commissioner. The application came to be dismissed by the impugned order. Hence this revision.

4. Heard Mr.N.Suresh, learned Counsel for the civil revision petitioner.

5. Mr.N.Suresh would draw my attention to the judgment in ***Vemba Gounder Vs. Pooncholai Gounder, AIR 1996 Madras 347***. The Hon'ble Mr.Justice S.S.Subramani has laid down a procedure that has to be followed by the Trial Court on the report of the Advocate Commissioner being received and objections being filed by any of the parties to the proceedings.

The relevant paragraph is set-forth as hereunder:-

" 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 afresh 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



WEB COPY



C.R.P.(PD).No.3682 of 2024

dismissal of the present application, the petitioner did not take any steps in this regard. 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."

6. A reading of this judgment makes it clear that the proper procedure that the Court must follow when an Advocate Commissioner's report is filed and when objections are made on the same, is to take evidence on the objections without the party even seeking for the same. While taking evidence for the objections, the learned Trial Judge should enter upon a finding whether he is accepting the report or rejecting the same.

7. Applying the said judgment to the facts of this case, the appropriate procedure that the Trial Court should have followed is to examine the



C.R.P.(PD).No.3682 of 2024

WEB COPY

Advocate Commissioner if the parties so desire and take into consideration the objections that are given by the civil revision petitioner and decide the same. This procedure has to be followed before the Court proceeds further in recording evidence on the merits of the case. As observed in the said judgment, for the fact that the Court has not followed the procedure, it does not mean that the report has to be scrapped.

8. Hence, the learned Trial Judge is directed to reopen the application in I.A.No.454 of 2021 which was closed on filing of the objections, hear the parties and if necessary, examine the Advocate Commissioner also and render a finding whether it is accepting the Advocate Commissioner's report or not. If it finds that the report is defective, to re-issue the warrant to the same Advocate Commissioner. This exercise should be completed within eight weeks from the date of receipt of a copy of this order.

9. With the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

11.09.2024



C.R.P.(PD).No.3682 of 2024

Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

grs

To

The Additional District Munsif, Tindivanam.



WEB COPY



C.R.P.(PD).No.3682 of 2024

V.LAKSHMINARAYANAN, J.

grs

C.R.P.(PD).No.3682 of 2024
and C.M.P.No.19982 of 2024

11.09.2024