



C.R.P.(PD).No.3769 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.R.P.(PD).No.3769 of 2022

Ramasamy

... Petitioner

VS

Arumugam

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and decreetal order dated 05.08.2019 in I.A.No.779 of 2018 in O.S.No.261 of 2015 on the file of the Court of Principal District Munsif, Kallakurichi.

For Petitioner : Ms.V.Srimathi

For Respondent : Mr.M.Senthilkumar

ORDER

This Civil Revision Petition has been preferred as against the order passed in I.A.No.779 of 2018 in O.S.No.261 of 2015 on the file of the Principal District Munsif, Kallakurichi dated 05.08.2019, wherein the



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petitioner herein has filed a petition before the Trial Court to scrap the Commissioner's report and to revisit the property by the same Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure. The Trial Court has dismissed the petition and as against the said order, the present Civil Revision Petition has been filed by the petitioner.

2. According to the petitioner, he is the 1st defendant in the suit and the respondent/plaintiff has filed a petition before the Trial Court for appointment of Commissioner in I.A.No.107 of 2016 and the same was allowed by the Trial Court and the Advocate Commissioner was appointed and he has also visited the suit property on 02.10.2017. At the time of inspection, the Advocate Commissioner has not find out the four boundaries stones. Without any equipments and at the instigation of the respondent/plaintiff without measuring the property, the Commissioner has inspected the suit property and the memo filed by the petitioner was also not considered by the Commissioner and the Commissioner's report and plan have been filed without following the procedures. Therefore, the Commissioner's report has to be scraped and once again, the Commissioner has to revisit the suit property.



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WEB COPY 3. According to the respondent, the Advocate Commissioner measured the property in the presence of both the Advocates, VAO, Surveyor and Village people on 02.10.2017. The petitioner has not raised any objection at that time. The petition is filed only to harass the respondent. Therefore, the petition is liable to be dismissed.

4. Before the Trial Court, no oral or documentary evidence is adduced on either side. The Trial Court, after hearing both sides, has dismissed the petition. As against the said order, the present civil revision petition has been filed.

5. The learned counsel appearing for the petitioner would contend that the Commissioner has inspected the suit property with the help of Surveyor without identifying the boundary stones and the same was objected by the petitioner. But the same has not been considered by the Commissioner and Advocate Commissioner has filed his report. Therefore, the report of the Commissioner has to be scraped and once again, the Commissioner has to



revisit the suit property. To that effect, he filed a petition before the Trial Court and the same was dismissed by the Trial Court. Therefore, the order of the Trial Court is liable to be set aside. In support of his contention, the petitioner has relied upon the judgment of this Court in ***R.Malligeswari vs. V.Munuswamy*** reported in ***(2015) 2 MWN (Civil) 358***.

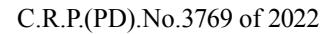
6. The learned counsel for the respondent would contend that already the Commissioner was appointed and he inspected the suit property in the presence of both the Advocates, VAO, Surveyor and Village people. Thereafter, the Commissioner has filed his report. During the inspection by the Advocate Commissioner, no any objection was made by the petitioner. Now, he filed the petition to scrap the Advocate Commissioner's report without any valid reasons. Therefore, the present civil revision petition cannot be entertained and the Trial Court also after elaborate discussion dismissed the petition. Therefore, the civil revision petition is liable to be dismissed.

7. This Court heard both sides and perused all the materials available on record.



8. In this case, according to the petitioner, already Commissioner was appointed and he inspected the suit property but without identifying the boundaries, the Commissioner has measured the suit property and filed his report. According to the respondent, the Commissioner with the help of Village Administrative Officer and Surveyor only identified the suit property and filed his report.

9. It is well settled law that Commissioner's report is only the guiding factor to the Court to come to a fair conclusion in respect of the extents and identification of the property. It is admitted fact that the Advocate Commissioner has inspected the suit property with the help of Village Administrative Officer and Surveyor and if any omissions made by the Commissioner, the petitioner can very well filed objections for the Commissioner's report and the same has to be considered by the Trial Court at the time of final disposal of the suit. If at all the petitioner aggrieved by the report of the Commissioner, he can very well examine the Commissioner to establish his objections. But the Commissioner's report cannot be scraped without any valid reasons and the petitioner has not raised any valid grounds



10. Further, the petitioner has sought for revisit/measure the suit property by the same Commissioner, but already Commissioner has inspected the suit property with the help of Surveyor. Therefore, the contention of the petitioner is not acceptable, if at all the petitioner affected by the Commissioner's report, he could very well file objections and examine the Commissioner with regard to the objections raised by him. In the present case, there is no sufficient grounds to scrap the Commissioner's report.

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petition and it does not any warrant interference.

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12. In view of the above said discussion, this Court is of the opinion that this Civil Revision Petition has no merits and deserves to be dismissed.

13. In the result, the Civil Revision Petition is dismissed. No costs.

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

To

The Principal District Munsif,
Kallakurichi.



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P.DHANABAL, J.

dm

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