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C.R.P. No. 3521 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 3521 of 2024

and

C.M.P. No. 19081 of 2024

H.Lalith Jain

... Petitioner / Petitioner /
Petitioner / Plaintiff

Vs.

Saravanabhavan

...Respondent /Respondent/
Respondent / Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 21.06.2024 made in Memo filed in I.A. No. 2 of 2022 in I.A. No. 1 of 2019 in O.S. No. 388 of 2017 on the file of the learned II Additional District Munsif Court, Erode.

For Petitioner : Mr. C.A.Ramanan

ORDER

This civil revision petition challenges the order passed by the II Additional District Munsif at Erode in memo dated 21.06.2024 in I.A. No. 2 of 2022 in I.A. No. 1 of 2019 in O.S. No. 388 of 2017.

2. O.S. No. 388 of 2017 is a suit filed by the civil revision petitioner



seeking a permanent injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the property. Along with the suit, the plaintiff filed an application in I.A. No. 643 of 2017 seeking for appointment of an Advocate Commissioner to note down the physical features of the property, alleging that, the respondents were proceeding with certain constructions.

3. Accepting the case of the plaintiff, an Advocate Commissioner was also appointed by an order dated 13.10.2017. The Advocate Commissioner visited the suit property on 16.10.2017 and submitted an interim report. Since the Advocate Commissioner did not proceed further to file a final report, an application was filed in I.A. No. 2 of 2022 to appoint a new Advocate Commissioner to note down the physical features. The Advocate Commissioner, Mr. V.P.Sankar Kumar, did not file a report on account of the fact he left practising before the Courts in Erode and moved on to fresher pastures. Accordingly, I.A. No. 2 of 2022 came to be allowed on 03.06.2023 appointing one Mr. J.Jaigurunath as the new Advocate Commissioner. He issued a notice fixing the inspection on 23.09.2023. However, the respondent did not agree to the date, and therefore, the date was revised to 25.11.2023. Since the area was filled with thorny bushes, he requested the P.W.D. department to remove the bushes and thereafter, he decided to fix a date of



inspection. However, nothing happened. Subsequently, on 09.02.2024, the Advocate Commissioner filed a memo before the Court seeking for assistance from a surveyor to measure the property utilizing the latest DGPS technology for measurement. On 07.03.2024, the learned Judge permitted the Commissioner to utilize the said DGPS method for survey.

4. On 10.05.2024, the Advocate Commissioner and the surveyor were present at the site and they inspected the property. After the inspection was over, the respondent filed a memo on 07.06.2024, stating that he was not in station on 10.05.2024 and the Advocate Commissioner had visited the property in his absence. In order to give quiteus to the issue, the learned Judge directed the Commissioner to revisit the property, and to note down the physical features and file a fresh report. This order was passed on 21.06.2024. Challenging this order, the present revision.

5. Mr. C.A.Ramanan would submit that a copy of the objection memo, which had been filed by the respondent, was served only on the Advocate Commissioner and not on the civil revision petitioner. Therefore, he would want the order to be set aside.

6. I have considered the argument of Mr. C.A.Ramanan.

7. The purpose for directing a revisit by the Commissioner is on account



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of the fact that the defendant stated that the Advocate Commissioner had fixed 10.05.2024, as a date of inspection, without consulting either him or his counsel. The learned Judge has decided to put an end to the interlocutory proceedings by directing the Advocate Commissioner to revisit the suit property after giving notice to both sides. I would agree with the measure adopted by the learned II Additional District Munsif at Erode since it would put an end to the objections that have been taken by the defendant. Yet, it is possible that it might give an opportunity to the defendant to prolong the litigation. Therefore, I requested Mr. C.A.Ramanan to contact the Advocate Commissioner and the learned counsel appearing for the defendant to come up with a common date on which the inspection can be made.

8. Mr. C.A.Ramanan reports to this Court that all of them have agreed that 14.09.2024 would be a date which would be conducive for all the parties to have an inspection of the suit property. The learned Advocate Commissioner is requested to visit the suit property on 14.09.2024. As the date has been fixed by consent, he can give the spot inspection memo to both sides and obtain their signature on the same. If this course of action is adopted, it would put to any unnecessary objections by both sides.

9. Accordingly, the civil revision petition stands disposed of. Mr.



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J.Jaigurunath, the learned Advocate Commissioner is requested to visit the suit property on 14.09.2024 and complete the survey along with the DGPS survey and submit a report to the Trial Court within two weeks thereafter. It is made clear that if either the petitioner or the respondent are not present on the date of inspection, the Advocate Commissioner need not wait for either party and proceed with the inspection and submit a report.

10. In the result, the civil revision petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

02.09.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To
The II Additional District Munsif Court, Erode.



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V.LAKSHMINARAYANAN, J.,

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