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CRP No.3782 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP Nos.3782 of 2022

T.Hariharan

... Petitioner

vs

1.T.Soundarajan

2.The Chairman, CMDA,
Thalamuthu Natarajan Building, Egmore,
Chennai-600 008.

3.The Zonal Officer/Assistant Commissioner,
Zone IX, Ward 125, Teynampet,
Chennai-600 018.

4.The City Engineer,
Corporation of Chennai,
Ribbon Building,
Poonamallee High Road,
Chennai-600 003.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Civil
Procedure Code to set aside the fair and decreetal order in IA No.2 of 2021

1 of 8



CRP No.3782 of 2022

WEB COPY

in OS No.6889 of 2013 dated 14.09.2022 passed by the VII Assistant City Civil Court.

For Petitioner	: Mr.S.Raveekumar
For Respondents	: Mr.S.Suresh Kumar for Ms.S.Indumathi for first respondent R2 to R4 - Notice served No appearance

ORDER

The civil revision petition is filed to set aside the fair and decreetal order in IA No.2 of 2021 in OS No.6889 of 2013 dated 14.09.2022 passed by the VII Assistant City Civil Court.

2. The petitioner is the plaintiff and the respondents are defendants in OS No.6889 of 2013 on the file of the VII Assistance City Civil Court, Chennai. The plaintiff has filed the said suit for permanent injunction. In the said suit, the petitioner had filed an application in IA No.4546 of 2018 to appoint an advocate commissioner to survey, measure and note down the



CRP No.3782 of 2022

physical features of the suit schedule property. The trial court has allowed the said application and appointed advocate commissioner, Thiru Rahuk K Jain and Engineer Mr.Ajees Mohideen to inspect the suit schedule properties. In pursuance of the direction of the Trial Court, the advocate commissioner after inspecting the suit schedule property, filed a report. Thereafter, the petitioner has filed another application in IA No.1 of 2019 in the said suit to strike off the report of the advocate commissioner dated 07.12.2018 and the additional report of the advocate commissioner dated 18.02.2019 and to appoint a new advocate commissioner to inspect, survey, measure and note down the physical features of the suit schedule properties including setbacks in all sides and note down the extent of construction put up in common passage in all the floors of the suit schedule A property. The trial court, by order dated 19.11.2019 had dismissed the said application. Thereafter, the petitioner/plaintiff has filed an application in IA No.2 of 2021 seeking permission of the Trial Court to cross examine the advocate commissioner and engineer based on their reports to bring out truthfulness. The trial court, by order dated 14.09.2022 had dismissed the said



CRP No.3782 of 2022

application. Challenging the said order, the petitioner has filed the present civil revision petition.

3. Learned counsel for the petitioner submits that the trial court has failed to follow the procedure in taking on record the report of the advocate commissioner and the procedures to be followed as settled by this Court. Therefore, the order of the trial court is liable to set aside.

4. Learned counsel for the respondent objected to the said submission of the learned counsel for the petitioner and supported the impugned order passed by the trial court. Learned counsel has further submitted that this Court in CRP No.565 of 2021, by its order dated 17.03.2021 has rejected the claim of the petitioners with regard to re-appointment of advocate commissioner and inspection of the suit schedule properties and permitted the petitioners to file objection pointing out the defects in the report before the court below and the court below will decide accordingly after hearing both the parties. The Trial Court has rightly dismissed the said application



CRP No.3782 of 2022

and permitted the petitioner to file objections before the Court below.

Hence, he seeks for a dismissal of this Revision.

5. Heard the parties and perused the materials available on record.

6. In the impugned order, the learned Judge has held that if the advocate commissioner is subjected to cross examination, it will amount to collection of evidence through advocate commissioner. This observation is unsustainable in view of the Order XXVI Rule 10 (2), which reads as follows:

"Order 26 Rule 10. Procedure of Commissioner

(1).....

***(2) Report and deposition to be evidence in suit.
Commissioner may be examined in person-***

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the court or, with the permission of the court, any of the parties to suit may examine the Commissioner personally in open court touching any part of the matters referred to him or mentioned in his report, or as to



WEB COPY



CRP No.3782 of 2022

his report, or as to the manner in which he has made the investigation"

7. The said Rule permits any party to suit may examine the Commissioner personally in open court touching any part of the matters referred to him or mentioned in his report or as to his report or as to the manner in which he has made the investigation.

8. When a party seeks to examine the commissioner personally in open court, it cannot be denied without any strong reason. In the impugned order, the learned judge has not assigned any strong reason for rejecting the petitioner's request for the cross examination of the advocate commissioner and engineer to bring out the truthfulness of the said report. Therefore, the impugned order is unsustainable and it is liable to be set aside and accordingly the order dated 14.09.2022 passed by the trial court is set aside. The petitioner is permitted to cross examine the advocate commissioner and engineer with regard to the report filed by them.



CRP No.3782 of 2022

WEB COPY

9. In fine, the civil revision petition is allowed. There will be no order as to costs. Consequently, CMP Nos.19922 and 19924 of 2022 are closed.

13.02.2024

Index: Yes/No
Internet: Yes/No
mrn

To
The VII Assistant City Civil Court.



WEB COPY



CRP No.3782 of 2022

V.SIVAGNANAM, J.

(mrn)

CRP Nos.3782 of 2022

13.02.2024