



C.R.P. (PD) .No. 3779 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P. (PD) .No. 3779 of 2024

&

C.M.P.No. 20690 of 2024

Kishore Kumar

...Petitioner

Vs.

1.B.Jayalakshmi

2.B.Baskaran

3.Umarani

4.B.Sathya

...Respondents

Prayer: Petition is filed under Article 227 of the Constitution of India against the order dated 05.06.2024 made in I.A.No.7 of 2023 in O.S.No.646 of 2011, on the file of the IV Additional District Munsif,



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For Petitioner : Ms. Zeenath Begum

ORDER

This Civil Revision Petition seeks to set aside the order of the learned IV Additional District Munsif, Salem, in I.A.No.7 of 2023 in O.S.No.646 of 2011 dated 05.06.2024.

2. O.S.No.646 of 2011 is a suit for declaration of title, recovery of possession, mandatory injunction and permanent injunction instituted by the respondents against the civil revision petitioner. Originally an application was filed for appointment of an Advocate Commissioner in I.A.No.1174 of 2011. The said application was allowed and an Advocate Commissioner was also appointed and he submitted his report on 17.08.2012. Even in his report, the learned Advocate Commissioner has commented that there are discrepancies



between the plan submitted by him as well as the plan maintained by the Revenue Authorities.

3. Neither the petitioner nor the respondents filed their objection to the said report. Thereafter, an application was filed to amend the plaint in I.A.No.520 of 2012. The purpose of filing this application is that subsequent to the filing of the suit, the defendant had demolished the southern side wall and had encroached upon the same. They would plead that the measurements have changed due to the encroachment made by the defendant. Therefore, instead of 15 feet, it would now read as 15 feet 10 inches in the description of the properties. This application came to be dismissed by the learned Trial Judge. Thereafter, a revision was preferred before this Court in C.R.P.No.4284 of 2017 and the same came to be allowed. Consequently, the very description of the property has been changed.

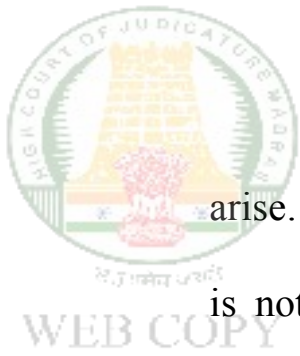


4. Pointing out the flaw in the report as well as the change in the description of the property pursuant to the order of this Court in the C.R.P.No.4284 of 2017, an application was filed in I.A.No.7 of 2023 for re-issue of a warrant to the Advocate Commissioner.

5. After receipt of the counter from the respondent / defendant, the application stood allowed. Hence, this revision.

6. Ms.Zeenath Begum submits that when objection is not presented by the parties, the question of re-issue of warrant to the Advocate Commissioner does not arise. She points out that an Advocate Commissioner cannot be appointed for the same purpose for which the Commissioner has already been appointed to visit the property.

7. Ms.Zeenath Begum is right in her view that, unless and until, objections are recorded, the question of re-issue of warrant does not



arise. Here is a case where the report of the Advocate Commissioner is not in sync with the plan maintained by the revenue authorities.

When there is a flaw in the report, it does not require the parties to file objections. Further, objections are filed in order to point out inherent flaws in the report which had been overlooked by the Advocate Commissioner.

8. A perusal of the impugned order shows that the learned Trial Judge has felt that there is a flaw in the plan filed by the Advocate Commissioner and hence, exercised her discretion to come to the conclusion that there is absolute necessity to appoint an Advocate Commissioner.

9. In view of the above, I am not inclined to interfere with the order passed by the learned Trial Judge. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected



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miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The IV Additional District Munsif,
Salem.



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V.LAKSHMINARAYANAN, J.

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