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C.R.P. No. 3521 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 3521 of 2022
and
C.M.P. No. 18733 of 2022

G.Adhikesavan

... Petitioner

Vs.

Bhanumathi

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the order and decretal order dated 23.08.2022 passed in I.A. No. 59 of 2018 in O.S. No. 25 of 2017 on the file of the Principal District Munsif Court, Alandur.

For Petitioner : Mr. T.Easwara Dhas

For Respondent : M/s. M.V.Seshachari

ORDER

This Civil Revision Petition has been preferred as against the order dated 23.08.2022 passed in I.A. No. 59 of 2018 in O.S. No. 25 of 2017 on the file of the Principal District Munsif Court, Alandur, wherein, the



respondent herein has filed an application for appointment of Commissioner to measure the property with the help of the Surveyor and note down the physical features and the same was allowed.

2. The petitioner is the plaintiff in the main suit and the suit is filed for the relief of declaration and for permanent injunction in respect of the suit property. The respondent/defendant has filed an application for appointment of Commissioner to measure the property with the help of Surveyor, by suppressing the fact that already in the same suit, an Advocate Commissioner was appointed through order passed in I.A. No. 47 of 2017 and also inspected the property in the presence of both the parties. The respondent once again filed the petition without scrapping the earlier report filed by the Commissioner. The petitioner in the counter vehemently denied the averments made in the petition for appointment of Commissioner and also stated about the earlier visit of Commissioner and filing of his report. But the Trial Court failed to consider the same and allowed the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

3. The learned counsel appearing for the petitioner would contend that the respondent herein has filed petition for appointment of Commissioner to



measure the property with the help of the Surveyor and already the property was inspected by the Commissioner and now the respondent herein has filed petition to measure the property which is not subject matter of the suit property. The subject matter of the suit property is 'A', 'B' and 'C' schedule properties. The Trial Court appointed the Commissioner to measure the property of the respondent which is not the subject matter of the property. Thereby, the order passed by the Trial Court is liable to be set aside.

4. The learned counsel appearing for the respondent would contend that the respondent has filed petition for appointment of Commissioner to find out the boundary. Therefore, she filed petition before the Trial Court. The Trial Court allowed the petition and appointed the same Commissioner. By appointment of Commissioner, no prejudice would be caused to the other side. Therefore, the order passed by the Trial Court is in order and the present Civil Revision Petition is liable to be dismissed.

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



6. In this case, the petitioner herein has filed suit for the relief of declaration and for permanent injunction. Already, the petitioner has filed petition in I.A. No. 47 of 2017 for appointment of Commissioner and the Commissioner was also appointed and filed his plan and noted the physical features. Thereafter, again the respondent herein filed a petition for appointment of Commissioner without mentioning about the earlier Commissioner appointed. The petition is filed to measure the suit property and the adjacent property which is said to be belongs to the respondent. The Trial Court also allowed this application. But the Trial Court failed to consider that already the Commissioner was appointed and the same was not pleaded in this application when already the Commissioner was appointed and filed his report, without challenging that report, the fresh application for measuring the same property is not permissible. The Trial Court also failed to consider that the property of the respondent is not at all disputed property. The Court can appoint Commissioner only to the suit property but not for other properties. The suppression of the earlier application and the concerned Commissioner's report and the inclusion of property which is not the subject matter of the suit, have not been considered by the Trial Court and thereby, the order passed by the Trial Court is liable to be set aside by allowing this Civil Revision Petition.



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7. In the result, the Civil Revision Petition is allowed by setting aside the order dated 23.08.2022 in I.A. No. 59 of 2018 in O.S. No. 25 of 2017 on the file of the Principal District Munsif Court, Alandur. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.07.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
pal

To

The Principal District Munsif Court, Alandur.



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P.DHANABAL, J.,

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