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C.R.P. No. 3673 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

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THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 3673 of 2022
and
C.M.P. No. 19464 of 2022

M.Sengottian

... Petitioner/Petitioner/Defendant

Vs.

1. P.Subramani

2. A.Shanmugam

3. P.Natesan

4. V.Thangavel

... Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the order dated 29.08.2022 passed in I.A. No. 6 of 2022 in O.S. No. 2 of 2021 on the file of the District Munsif Court, Tiruchengode, Namakkal District.

For Petitioner : Mr. G.Peranban

For Respondents : Mr. K.R.Samratt



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ORDER

This Civil Revision Petition has been preferred as against the order dated 29.08.2022 passed in I.A. No. 6 of 2022 in O.S. No. 2 of 2021 on the file of the Additional District Munsif Court, Tiruchengode, wherein, the petitioner herein has filed petition to re-issue the Commissioner's warrant in I.A. No. 3 of 2021.

2. The petitioner is the defendant in the main suit and the respondents herein have filed the said suit for the relief of declaration and permanent injunction. While pending suit, the respondents herein have filed an application in I.A. No. 3 of 2021 for appointment of Commissioner to measure the suit property with Surveyor and the same was allowed. In that order, the Commissioner was also directed to measure the property of the petitioner which is adjacent to the suit property, if possible. But the Commissioner has not measured the property and the Commissioner also did not file proper report. The suit survey number is S.No. 93 and the petitioner's property is S.F. No. 67/1G3 and the pathway is situated in S.No. 92/2. The Commissioner has not even mentioned about the property of the petitioner that is S.F. No. 67/1G3 and also the common pathway that is S.No. 92/2. Therefore, they filed the petition to re-issue the Commissioner's warrant. But



the Trial Court has not considered the same and dismissed the petition.

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3. The learned counsel appearing for the petitioner would contend that he is the defendant in the main suit and filed the petition to re-issue the Commissioner's warrant. Already the respondents have filed application before the Trial Court in I.A. No. 3 of 2021 for appointment of Commissioner and the Commissioner also inspected the property and filed a report. The petitioner also filed his objections for the commissioner report. The Commissioner has not measured the property of the petitioner and the petitioner has filed petition to re-issue the Commissioner's warrant. The Trial Court without considering the same dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

4. The learned counsel appearing for the respondents would contend that already the respondents have filed petition for appointment of Commissioner in I.A. No. 3 of 2021, wherein, the commissioner has inspected the property in the presence of both the parties and thereafter filed report and the petitioner also filed objections for the report. Thereafter filed this application to re-issue the Commissioner's warrant alleging that he has to measure the property in S.F. No. 67/1G3. The suit is filed by the



respondents/plaintiffs only in respect of S.No. 93 and there is no dispute in respect of the property of the petitioner that is S.F. No. 67/1G3. Moreover, the petitioner herein has filed written statement with counter claim to declare that the common pathway situated in S.No. 92/2 is common pathway and the petitioner is having right over the property. While so, he filed petition to measure the property of S.F. No. 67/1G3 which is not related to the suit. The Trial Court also after elaborate discussion, correctly dismissed the petition. Therefore, 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 respondents/plaintiffs have filed suit for declaration and permanent injunction in respect of S.N. No. 93 and the defendant is having adjacent land over the suit property in S.F. No. 67/1G3. In the written statement, the defendant also filed counter claim to declare that the S.F. No. 92/2 is a common pathway. As per pleadings, there is no dispute in respect of the property in S.F. No. 67/1G3 and the plaintiffs have also filed suit only in respect of S.No. 93. There is no dispute in respect of S.F. No. 67/1G3 and therefore, no necessity has arisen to measure the property in S.F. No. 67/1G3.



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7. It is an admitted fact that already the Commissioner was appointed and measured the property and filed his report. At the time of inspection by the Commissioner, the petitioner also participated and also filed his objections for the Commissioner report. Since there is no dispute in respect of S.F. No. 67/1G3, the re-issue of Commissioner's warrant would not arise. The Trial Court also in this context, after elaborate discussion, correctly dismissed the application and by way of measurement in S.F. No. 67/1G3, no purpose will be served. The petitioner's endeavour is only in respect of S.F. No. 92/2 and suit is filed for S.F. No. 93 by the respondents/plaintiffs. Therefore, both the parties can produce documents in respect of their rights over their respective properties and the re-issue of Commissioner's warrant for measuring the S.F. No. 67/1G3 is no way helpful to decide the case. Therefore, the order passed by the Trial Court is in order and the present Civil Revision Petition has no merits and deserves to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

15.07.2024

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

The District Munsif Court,
Tiruchengode,
Namakkal District.



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P.DHANABAL, J.,

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