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C.R.P.(PD)No.3571 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.(PD) No.3571 of 2022
and CMP.No.18966 of 2022

Murali

... Petitioner

Vs.

Chandrasekaran

... Respondent

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, against the order passed on 25.03.2022 in I.A. No. 1126 of 2021 in O.S. No. 89 of 2008 on the file of the Additional District Munsif Court, Tindivanam.

For Petitioner : Mr. P.Sankaranarayanan

For Respondent : Mr. R.Ramachandran

ORDER

The Civil Revision Petition is preferred against the order dated 25.03.2022 passed in I.A. No. 1126 of 2021 in O.S. No. 89 of 2008 on the file of the Additional District Munsif Court, Tindivanam, wherein the respondent herein filed the petition before the Trial Court to scrap Advocate Commissioner's report to appoint a new Advocate Commissioner for the purpose of measuring the property and the same was allowed by the Trial



Court. Aggrieved by the same, the present Civil Revision Petition is filed by the petitioner.

2. According to the petitioner, he is the plaintiff in the main suit and filed the suit for permanent injunction. While pending the suit, he filed an application before the Trial Court in I.A. No. 138 of 2021 for appointment of Commissioner. The Commissioner was appointed and he also measured the property with the help of the Surveyor in the presence of both parties, after that the Commissioner filed a report and the objections were also filed by the respondent. Thereafter, the respondent herein has filed an application before the Trial Court to scrap the Advocate Commissioner's report and to appoint new Advocate Commissioner for the purpose of measuring the property. The Trial Court has allowed the petition. In fact, there are no sufficient grounds raised by the respondent herein to scrap the earlier Advocate Commissioner's report. The Commissioner already measured the property with the help of the Surveyor in the presence of the both parties and thereby without any valid grounds, the Trial Court has allowed the application and scrapped the report, the same is liable to be set aside.

3. According to the respondent, the petitioner herein earlier filed a petition for appointment of Commissioner in I.A. No. 138 of 2021 and the



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Commissioner was appointed, but the Commissioner has not filed fair report and he acted in a biased manner since the Commissioner was the tenant under the petitioner. Therefore, the report of the Commissioner has to be scrapped to that effect, the respondent also filed petition. The Trial Court also allowed the application and scraped the Commissioner's report and appointed another Commissioner by holding that the earlier Commissioner has not followed the directions issued by the Trial Court. Therefore, the order passed by the Trial Court is in order and the present Civil Revision Petition is liable to be dismissed.

4. The learned counsel appearing for the petitioner would contend that the petitioner has filed the petition before the Trial Court for appointment of Commissioner and the petition was allowed and thereafter the Commissioner inspected the property in the presence of the both parties after issuing proper notice to both sides. The Commissioner has also measured the property with the help of the Surveyor and also filed his report before the Trial Court. The respondent also filed their objections. While so, the respondent herein again filed an application to scrap the Commissioner's report and to appoint a fresh Commissioner and the same was allowed. The Trial Court, in the order, held that the Commissioner did not follow the directions issued by the Trial Court at the time of inspection and also he was the tenant under the petitioner and



thereby scraped the report of the Commissioner and appointed the fresh Commissioner, which is erroneous. Therefore, the order passed by the Trial Court is liable to be set aside.

5. The learned counsel appearing for the respondent would contend that earlier Commissioner appointed was not given proper notice and he also has not complied with the directions issued by the Trial Court while inspecting the suit property and he further acted in a biased manner as he was the tenant under the petitioner. Therefore, the Trial Court correctly allowed the petition and scrapped the Commissioner's report. Therefore, the order passed by the Trial Court is in order and the present petition is liable to be dismissed.

6. This court heard both sides and perused the records available on record.

7. In this case, it is an admitted fact that already the Commissioner was appointed after hearing both sides and the Commissioner also inspected the property with the help of Surveyor in the presence of both parties and filed his report. The report was also objected by the respondent and objections were also filed. In the meantime, the respondent herein has filed a petition before the Trial Court to scrap the Commissioner's report on the ground that the Commissioner acted in a biased manner and he has not complied the



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directions issued by the Trial Court. The Trial Court also allowed the petition by holding that the Commissioner has not followed the directions issued by the Trial Court. This Court perused the entire records, and it is seen that there are no valid grounds raised by the respondent herein to seek to scrap the Commissioner's report as it is an admitted fact that already the Commissioner has inspected the property along with the Surveyor and there is no dispute in respect of the either measurement or identification of the property. Merely because the Commissioner was the tenant under the petitioner, it cannot be said that he acted in a biased manner. There is no specific allegation as against the Commissioner that he acted biasedly. In the absence of any such allegations established by other side, it cannot be said that the Commissioner acted biasedly. There is no dispute in respect of the identification or the measurement of the property. It is also admitted fact that the Commissioner inspected the property along with the Surveyor. The Commissioner is an officer appointed by the Court and just like that for flimsy reasons, the Court cannot scrap the Commissioner's report without valid reasons. There should be strong grounds established to scrap the Commissioner's report. But in the present case on hand, there is no strong grounds raised by the Petitioner to scrap the Commissioner's report. Moreover, the suit is only for the relief of permanent injunction. Hence, the appointment of Commissioner itself is not necessary in this case. However, the Trial Court earlier allowed the



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application and the Commissioner also inspected the property and filed the report. The respondent also raised objections for the Commissioner's report and thereby the Trial Court has to decide the case based on the earlier Commissioner's report in accordance with law, if it is necessary to decide the case.

8. In view of the aforesaid discussions, this Court concludes that the order passed by the Trial Court is unsustainable and the same is liable to be set aside. Accordingly, the order passed by the Trial Court in I.A. No. 1126 of 2021 is set aside and the earlier Commissioner's report is restored. With the said observations, the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

02.07.2024

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

The Additional District Munsif,
Tindivanam.



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