



WEB COPY



C.R.P.No.3827 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3827 of 2024 &
CMP.No.21003 of 2024

Zareena Mohammed Illyas Arayalpurath : Petitioner

versus

1.Sajila.V
2.Rosna V.P.
3.Kavitha K : Respondents

Prayer: Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decretal order dated 16.07.2024 in I.A.No.3 of 2024 in O.S.No.35 of 2023 on the file of the District Munsif, Mahe and allow the application in I.A.No.3 of 2024 as prayed for.

For Petitioner : Mr.Gopika Nambiar

For Respondents : Mr.Manoj Sreevalsan

ORDER

The civil revision petition arises against the order passed by the learned District Munsif cum Judicial Magistrate, Mahe in I.A.No.3 of 2024 in O.S.No.35 of 2023.



C.R.P.No.3827 of 2024

2. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

3. The civil revision petitioner is the plaintiff. She filed a suit for permanent injunction restraining the defendants from trespassing into the suit schedule mentioned property and for mandatory injunction directing the defendants to demolish the building constructed by them including the compound wall, which the plaintiff alleges was, put up by encroaching into her land.

4. The claim of the plaintiff is that she purchased the property in the year 2016. Subsequently, the defendants 1 and 2 had purchased the adjacent property in the year 2018. They constructed a building on the northern side of the property. The plaintiff alleges that the said construction has to be brought down, since the defendants 1 and 2 had encroached upon her holdings and had put up the construction.

5. Pending the suit since the plea of encroachment had been raised, an



C.R.P.No.3827 of 2024

application was filed for appointment of an Advocate Commissioner in I.A.No.2 of 2023. The defendants had no objection to an Advocate Commissioner being so appointed and the said application stood allowed.

6. The learned Advocate Commissioner visited the suit property on 23.02.2024. He measured the property in the presence of the parties with the assistance of Sub Inspector of Land Survey, Mahe. He submitted a report on 22.03.2024. The report is also annexed with a location sketch of the property. The report was filed on 22.03.2024 and on 25.03.2024, the said application was closed. Therefore, the plaintiff took out a fresh petition in I.A.No.3 of 2024 to set aside the report of the Advocate Commissioner. This application was opposed by the defendants.

7. On consideration of the affidavit and the petition, the learned District Munsif came to a conclusion that there is no necessity to set aside the report. Hence, this revision.

8. I have heard Ms.Gopika Nambiar for the civil revision petitioner



C.R.P.No.3827 of 2024

and Mr.Manoj Sreevalsan for the respondents.

WEB COPY

9. Ms.Gopika Nambiar invites my attention to the plan annexed to her sale deed in document No.24023 of 2021. She points out that the East-West extent of her property is 8.9 meters and that of North-South is 3 meters. She compares this with a location sketch that has been submitted by the advocate commissioner to point out that the advocate commissioner has divided the land erroneously into 1.4 and 1.6 with respect to portion marked B and has shown other 1.6 meters in the portion marked C. She says that this is the confusion that exists in the plan. Therefore she pleads that the order of the learned Trial Judge should be revised and the Advocate Commissioner should be directed to revisit the suit property.

10. Mr. Manoj Sreevalsan points out that the defendants did not have any objection to the Advocate Commissioner visiting the suit property and submitting a report, on account of the fact that the construction by the defendants had been made after they had obtained permission from the appropriate planning authority. He further argues that prior to granting the permission, the authorities had inspected the property and were convinced



C.R.P.No.3827 of 2024

that the construction was in accordance with their title. He draws my attention to the counter affidavit filed by the defendants in I.ANo.3 of 2024 and argues that if the plan, which is relied upon by the plaintiff, is to be utilized then the purpose of appointing the Advocate Commissioner with a surveyor itself is rendered otiose. Furthermore, relying upon the location sketch, Mr. Manoj Sreevalsan submits that the Advocate Commissioner has clearly demarcated the extent running North-South as 3 meters and it tallies with the suit schedule mentioned property. She says that the order of the learned Trial Judge does not require any interference.

11. I have carefully considered the arguments of both sides.

12. The position of law as to how the Trial Court should deal with an application for appointment of an Advocate Commissioner has been dealt with by this Court in ***Vemba Gounder v. Pooncholai Gounder, AIR 1996 Madras 347***. The Honorable Mr. Justice S.S.Subramani was pleased to hold as follows:

30. In this case, admittedly, there is no finding



C.R.P.No.3827 of 2024

whether the report filed by the Commissioner can be accepted or not, i.e. there is no finding by the Court below about the satisfactory procedure adopted by the Commissioner in filing the report and also about the correctness of the report. So long as there is no finding, the jurisdiction of the Court in appointing a second Commissioner as sought for by the petitioner is doubtful. The dismissal of the application by the Court below cannot, therefore, be interfered with.

31. The petitioner has filed objections to the report. According to him, even the suit property is not identified by the Commissioner and he has simply copied a survey plan with the help of a surveyor. If that be so, the petitioner should have taken steps to examine the Commissioner or let in evidence to satisfy the Court below that the report is faulty and the same should be scrapped and the same Commissioner should be directed to file another report or afresh Commission should be issued with a direction to locate the property as sought for in the application. No such attempt was made by the petitioner. Even though objections were filed in the year 1994, till the dismissal of the present application, the petitioner did not take any steps in this regard. He could have moved the Court below to enter



C.R.P.No.3827 of 2024

a finding regarding the acceptability or otherwise of the report. I am sure, if such an attempt had been made by the petitioner, the Court below would have rendered a finding on the Report already filed by the Advocate-Commissioner. I have already said that when objection is raised on a Report, it is the duty of the trial Court to enter a finding regarding the same before asking the parties to let in evidence on the merits of the case. For the purpose of substantiating their Objections to the Report, probably examination of the Commissioner alone may not be sufficient. Parties may also have to be examined. Only after taking such steps and after arguments, when the Court enters a finding on the Report already filed, if he is aggrieved by the finding, the petitioner can insist upon issuing a second Commission or remit the warrant to the same Commissioner, for curing the defects made mention of in the Objections. Merely accusing the trial Court of not following the procedure is not proper.”

13. A perusal of the aforesaid judgment makes it clear that if a party is not satisfied with an Advocate Commissioner's report, then he or she should file an objection to the same. If such objections are filed, the Court should



C.R.P.No.3827 of 2024

adjudicate on the validity of the Advocate Commissioner's report vis-a-vis the objections that are being filed by any party. Once the Court comes to a conclusion that the report is unsatisfactory, then it can set aside the report and Suo Motu appoint a fresh Advocate Commissioner or re-issue the warrant to the same Commissioner. It is not a dispute neither the plaintiff nor the defendant have filed objections to the report.

14. Ms.Gopika Nambiar submits that the learned Trial Judge did not give any opportunity to the plaintiff to file her objections.

15. If that be the situation, this revision can be disposed of with a direction to the learned District Munsif to reopen I.A.No.2 of 2023 and receive the objections that the plaintiff might filed within a particular period. In case, the plaintiff does not file any objection within 15 days from the date of reopening, then the learned Judge will be entitled to receive the report and proceed further in the suit. If objections are filed by the plaintiff or the defendants, the learned Trial Judge will assess the Advocate Commissioner's report on the basis of the objections so filed and come to a conclusion



C.R.P.No.3827 of 2024

WEB COPY

whether the report is satisfactory or not. If she comes to a conclusion that the report is satisfactory, then she is entitled to receive the said report in evidence in terms of Order XXVI Rule 10(2) of the Code of Civil Procedure. For the said purpose, in case the plaintiff wants to examine the Advocate Commissioner in the box, the Court should permit the parties to conduct the said exercise. Needless to add that since the procedure laid down by this Court in Vemba Gounder's case having not been followed, the finding that has been rendered by the learned Trial Judge in I.A.No.3 of 2024 will not stand in the way of the learned Trial Judge to consider the objections to be filed by the plaintiff.

16. With the above directions, this civil revision petition is disposed of. It is open to the defendant to summon the land surveyor of Mahe, if the plaintiff seeks for examination of the Advocate Commissioner in terms of Order XXVI Rule 10 of the Code of Civil Procedure.

19.10.2024

nl



C.R.P.No.3827 of 2024

Index : Yes/No
Speaking Order/Non speaking order
Neutral Citation : Yes/No

To

1.The District Munsif, Mahe



WEB COPY



C.R.P.No.3827 of 2024

V.LAKSHMINARAYANAN, J.
nl

C.R.P.No.3827 of 2024

19.10.2024