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C.R.P.(PD).No.4128 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4128 of 2024
and C.M.P.No.22652 of 2024

1. Adhilakshmi
2. Vaanchinathan

.. Petitioners

Versus

Solai @ Solaimani

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order, dated 27.08.2024 made in I.A.No.504 of 2023 in I.A.No.1002 of 2013 in O.S.No.335 of 2013 on the file of Principal District Munsif Court, Villupuram and to allow the above Civil Revision Petition.

For Petitioner : Mr.C.Prabakaran

ORDER

This Civil Revision Petition arises out of the order passed by the learned Principal District Munsif, Villupuram in I.A.No.504 of 2023 in I.A.No.1002 of 2013 in O.S.No.335 of 2013, dated 27.08.2024.



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2. The civil revision petitioners are the defendants in the suit. O.S.No.335 of 2013 is a suit filed for declaration and for permanent injunction with respect to the suit schedule mentioned property. Pending the suit, the respondent/plaintiff took out an application for appointment of an Advocate Commissioner to note down the physical features and file a report. This application was numbered as I.A.No.1002 of 2013. It application came to be allowed and an Advocate Commissioner was appointed. The Advocate Commissioner filed a report on 26.09.2023. Immediately, on the report having been served on the civil revision petitioners/defendants, they filed detailed objections as are clear from page No.38 to page No.41 of the typed set of papers. These objections was filed on 06.10.2013 without brooking any delay.

3. Instead of following the procedures established under the Code of Civil Procedure, the petitioners/defendants filed two applications i.e., I.A.No.504 of 2023, seeking to reopen the application in I.A.No.1002 of 2013 and I.A.No.505 of 2023, to remit the warrant for a revisit by the Advocate Commissioner. These applications were opposed by the



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respondent/plaintiff. He pleaded that it is only for the purpose of dragging on the suit, which has been pending for more than a decade, that the petitioners/defendants took out the applications. In addition, the respondent/plaintiff pleaded that the Advocate Commissioner acted independently and not as per the instructions given by their learned Counsel. Taking into consideration the petitions and the common counter-affidavit that were presented, the learned Principal District Munsif, Villupuram proceeded to dismiss both the petitions, against one of which, the present Civil Revision Petition.

4. Heard Mr.C.Prabakaran, learned Counsel for the petitioners.

5. Mr.C.Prabakaran invites my attention to unnumbered fourth paragraph of the Advocate Commissioner's report to argue that the plan that was filed by the Advocate Commissioner is not in accordance with the measurements on ground and it is only on account of that, the warrant deserves to be remitted to the Advocate Commissioner.

6. I have carefully considered the submissions of Mr.C.Prabakaran.



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7. It is not in dispute that the learned Advocate Commissioner submitted a report, to which, detailed objections were filed by the petitioners/defendants.

8. The position of law, which prevails as regards to the situation where objections are filed to an Advocate Commissioner's report is settled in ***Vemba Gounder Vs. Pooncholai Gounder, AIR 1996 Mad 347***. The Hon'ble Mr.Justice S.S.Subramani held that if an Advocate Commissioner's report is filed before the Court, it is the duty of the Trial Court to decide whether the report must be accepted or not. Only on the report being accepted by the Court, does the report of the Advocate Commissioner become a part of the evidence in the suit in terms of the Order XXVI Rule 10(2) of the Code of Civil Procedure.

9. Prior to accepting the report, the Trial Court, which appointed the Advocate Commissioner, should seek for objections from the parties. In case objections are filed, then, the Court should decide on the validity of the objections so made, prior to proceeding further with the suit. In case, the



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Court comes to a conclusion that the Advocate Commissioner's report is unsatisfactory and decides to accept the objections filed thereto, then, the Court should re-issue the warrant. In case, the Court accepts the Advocate Commissioner's report and rejects the objections, the buck stops there. Unfortunately, in this case, the detailed procedure, laid down by this Court in *Vemba Gounder's* case (cited *supra*), was not followed by the learned Principal District Munsif. For the ready reference of the Court, the paragraph Nos.30 ad 31 of the said order are extracted hereunder:-

"30. In this case, admittedly, there is no finding 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 a finding regarding the acceptability



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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."

10. In the light of the clear and categorical view that was laid down by this Court, this Civil Revision Petition is disposed of on the following terms:-

(i) The Trial Court shall consider the Advocate Commissioner's report, dated 26.09.2023 along with the objections that were filed by the petitioners/defendants on 06.10.2023;

(ii) The Trial Court should come to a conclusion that the Advocate Commissioner's report deserves acceptance and should be made part of the evidence in the suit. In case, it comes to the conclusion that the Advocate Commissioner's report is defective, then, it shall consider re-issuance of the



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warrant.

(iii) In the light of the above discussion, I have to hold that the applications filed to reopen the application in I.A.No.1002 of 2013 and to remit are premature.

After following the exercise that was set-forth above, if the Court comes to a conclusion that the report is not capable of acceptance, then, the petitioners/defendants can file an application for re-issuance of warrant, in case, the Trial Court *suo motu* does not issue the warrant to the Advocate Commissioner. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Principal District Munsif Court,
Villupuram.



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V.LAKSHMINARAYANAN, J.

grs

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