



C.R.P.[PD].No.4772 of 2024
and C.M.P.No.26707 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.[PD]No.4772 of 2024
and C.M.P.No.26707 of 2024

Balaraman

.. Petitioner

Vs.

1.Mohan

2.Anandhan

3.Kanniyammal

4.Valliammal

5.Ponnusamy

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order and decree dated 10.07.2024 made in I.A.No.748 of 2023 in I.A.No.605 of 2020 in O.S.No.169 of 2020, on the file of the learned Principal District Munsif, Tindivanam and consequently direct the learned Principal District Munsif, Tindivanam to appoint a new Advocate Commissioner to measure the suit property.

For Petitioners : Mr.P.Dineshkumar



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ORDER

This Civil Revision Petition is filed by the instance of the 4th defendant. The suit is one for the declaration of title and also for declaration that the sale deed executed in favour of the civil revision petitioner is null and void and for permanent injunction and for a direction to remove the fence that has been put up in the suit property.

2.The pleadings have been completed by way of filing written statement by the parties. Prior to the filing of the written statement, the respondents 1 and 2/plaintiffs had taken out an application in I.A.No.605 of 2020, seeking for appointment of an Advocate Commissioner to survey the suit properties and submit a report. An Advocate Commissioner was appointed and he has also executed the warrant. The report was submitted on 22.02.2023.

3.The petitioner/4th defendant claims that he had filed the objection to the Advocate Commissioner's report. Thereafter, the petitioner filed an



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application to scrap the Advocate Commissioner's report and appoint a new Advocate Commissioner.

4.The learned Principal Judge, Tindivanam, dismissed the said application filed by the petitioner. Hence, the present Civil Revision Petition has been filed.

5.Heard Mr.P.Dinesh Kumar, for the petitioner.

6.He reiterated the contention that had taken by his counter part in the trial Court. He pleaded that the Advocate Commissioner has executed the warrant and filed his report, without considering the objections raised by the petitioner, hence, the report has to be scrapped.

7.I have considered the submissions made by Mr.P.Dinesh Kumar, for the petitioner.

8.Any party to a suit proceedings is entitled to raise an objection to



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the Advocate Commissioner's report prior to the Court accepting the report.

The trial Court should examine the Advocate Commissioner's report, the warrant and objection and if necessary, examine the Advocate Commissioner and thereafter has to come to the conclusion, whether the report has to be admitted as evidence in the suit. After such exercise is carried out, in case, the Court feels that the Advocate Commissioner's report is not acceptable, then it is empowered to *suo motu* scrap the report. If necessary, even without an application filed by the parties and order a fresh Commission. This stage has not yet come in the present case since only the Advocate Commissioner has filed his report to which, the petitioner has filed objections. It is for the Court to examine and comes to the conclusion that the same has to be admitted in evidence. This position has been settled in ***Vemba Gounder Vs. Pooncholai Gounder, AIR 1996 Mad 347.***

9. Therefore, the learned Principal District Munsif has rightly come to the conclusion that the application moved by the petitioner to scrap the Advocate Commissioner's report even before the exercise mentioned above has been carried out, is pre-mature and not maintainable.



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10. However, the learned Principal District Munsif, Tindivanam shall follow the procedure mentioned in para No.30 and 31 of the above said judgment (cited supra), which are extracted as under:

“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



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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 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.”

11.If the Court below comes to the conclusion that the Advocate



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Commissioner's report has to be taken as part of the evidence, it shall pass order assigning the reasons thereof. The view taken by the learned Judge that the petition is not maintainable, at this stage, is in line with the observation made in the above judgment.

12.In the light of the above, I am not inclined to interfere with the order questioned in this Revision. It is open to the revision petitioner to plead before the Court below to consider the objections made by him to the report of the Advocate Commissioner and if required, the petitioner is entitled to summon the Advocate Commissioner for examination.

13.With the above observation, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

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V.LAKSHMINARAYANAN, J.

rst

To:

The District Munsif, Tindivanam.

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