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C.M.P.No.325 of 2024

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in

S.A.No.471 of 2012

G.ARUL MURUGAN, J.

This petition has been filed to reject the Advocate Commissioner's report dated 25.04.2022 and consequently for re-issuance of the warrant of Commission to any other Advocate Commissioner to properly comply with the order 02.04.2019 passed in C.M.P.No.7380 of 2019.

2. When the Second Appeal was taken up for final hearing on 02.04.2019, this Court noticed that only dispute in the appeal was with regard to Sub Division in the survey of the suit property.

3. This Court found that the title deed in favour of the plaintiffs indicates that they have purchased the property in survey No.284/A/1A, but it is the contention of the petitioners/plaintiffs that the suit property is survey No.284/1A/1A13, whereas it is the contention of the defendants that the said survey number belongs to them and they are in possession. This Court also found that the documents filed by the defendants in Ex.B.2 does not tally with Ex.B.7.



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4. In these circumstances, for the purpose of identifying the suit property, this Court in its order dated 02.04.2019 has appointed an Advocate Commissioner and passed the following order:

"7. Therefore, in order to arrive at a conclusion with regard to the survey numbers, this Court is of the view that appointment of an advocate commissioner is very much required particularly to identify the suit property with the aid of a surveyor.

8. Hence, this Court appoints Mr.M.Rajasekhar, Enrollment No.433/1993 having office at No.193, Additional Law Chambers, High Court Buildings, Chennai - 104, Ph - 9444031305 as an advocate commissioner in this regard to identify the suit property with the help of a surveyor and with the help of original revenue records like A Register, FMB Sketch of the year 1961 till the date of filing of the suit.

9. The advocate commissioner shall be paid a sum of Rs.40,000/- by the petitioners/appellants apart from survey expenses and travelling expenses. The commissioner shall take aid of a surveyor of Kanchipuram District and identify the suit property in S.No.284/A/1A13. The District Surveyor of Kanchipuram District is hereby directed to nominate a surveyor in the rank of Taluk surveyor to carry out this object as requested by the advocate commissioner.



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The advocate commissioner shall also identify the suit property in terms of the title deeds of the parties."

5. In the above said order, this Court has specifically directed the Advocate Commissioner to identify the suit property with the help of a Surveyor and with the help of original revenue records like 'A' Register, FMB Sketch of the year 1961 till the date of filing of the suit. Further, this Court has directed the Advocate Commissioner to take the aid of a Surveyor of Kanchipuram District and identify the suit property in S.No.284/A/1A13. Further, the District Surveyor of Kanchipuram District was directed to nominate a Surveyor in the rank of Taluk Surveyor to carry out this object as requested by the Advocate Commissioner. The Advocate Commissioner was also directed to identify the suit property in the terms of the title deeds of the parties.

6. The Advocate Commissioner has filed a report on 25.04.2022. As per the report, he has visited the property on 22.06.2019 along with the local Surveyor namely Mr.Siva in the presence of the Counsel for the appellants and for the respondents to execute the warrant. It is stated in the



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report that the Surveyor does not have records of 'A' Register and FMB sketch from the year 1961 and 'A' register was available from the year 1985 onwards. It is also stated in the report that when the Advocate Commissioner requested the Surveyor to issue the correlation certificate for sub division. It was informed that such certificate can be issued by the Taluk Tashildar alone.

7. The plaintiffs have filed objections to the Advocate Commissioner report and filed this petition in C.M.P.No.325 of 2024 to reject the Advocate Commissioner's report on 25.04.2022 and consequently for re-issuance of the warrant of Commission to any other Advocate Commissioner.

8. Heard the learned counsel for the appellants/plaintiffs and the learned counsel for the respondents/defendants.

9. The learned counsel for the appellants submitted that since the title documents and the revenue records submitted by both the parties differed to identify the suit property, this Court had appointed the Advocate



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Commissioner with the specific directions to conduct the survey with the help of Taluk Surveyor to be nominated by the District Registrar, Kancheepuram by comparing FMB sketch and 'A' Register from the year 1961 and identify the suit property. But, however, the Advocate Commissioner has not conducted the survey as per the warrant issued to him and the survey has been conducted by the local Surveyor without aid of the FMB sketch and 'A' register extract from the year 1961 and therefore correct identify of the property could not be established and the report filed by the Advocate Commissioner is not in line with the directions issued by this Court and sought for re-issuance of warrant.

10. The learned counsel for the respondents contended that the petitioners/plaintiffs cannot be allowed to gather evidence by appointing an Advocate Commissioner and since a report has been filed, the same may be taken note of and the appeal could be decided on merits.

11. This Court found from the documents filed by either of the parties, both were claiming possession in respect of the survey No.284/A/1A which has been sub divided as survey No.284/1A/1A13. Since the



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identification of the property was to be established pursuant to the Sub division carried on, this Court had specifically directed the Advocate Commissioner to survey the property with the aid of FMB and 'A' register from the year 1961 and particularly the task to be carried out by the Taluk Surveyor to be nominated by the District Surveyor, Kanchipuram District, so that all the records will be available and the proper survey would be conducted and the identification of the property could be established. These are all the disputes in the present appeal. However, perusal of the Advocate Commissioner report reveals that the survey has not been conducted as per the directions issued by this Court and the survey has been conducted with the help of local Surveyor without the aid of FMB sketch and 'A' register extract from the year 1961.

12. In spite of specific directions issued by this Court to carry out the survey in the manner directed therein, the report in deviation to the directions issued by this Court cannot be relied on. In these circumstances, the report of the Advocate Commissioner dated 25.04.2022 is hereby rejected.



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13. Hence, this Court appoints **Mr.A.Vignesh, Enrolment No. MS.1694/2014** having office at **No.6, 1st Floor, Esplanade, SICCI, Indian Chamber Building(Main), Chennai -108, Mobile No.: 94457 83180**, as Advocate Commissioner to identify the suit property and submit a report, as per the directions issued by this Court on 02.04.2019 referred earlier. The Advocate Commissioner shall be paid a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** by the Petitioners/Appellants apart from survey expenses and travelling expenses.

14. Accordingly, this petition is disposed of with the above observations.

15. List the Second Appeal after the report filed by the Advocate Commissioner. The Advocate Commissioner shall endeavour to complete the process and file a report before this Court within a period of three months.

01.02.2024

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