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C.R.P.(MD)No.524 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 25/03/2024

Date of Pronounced : 05/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.524 of 2023

and

CMP (MD) No.2508 of 2023

1.Muthuramalingam

2.Rajeswari

: Petitioners/Respondents/
Defendants 1 and 2

Vs.

Periyasamy

: Respondent/Petitioner/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 07/01/2023 passed in IA No.451 of 2022 in OS No.359 of 2014 on the file of the Principal District Munsif, Thirumangalam and pass such other orders.

For Petitioners : Mr.R.Murali
for Mr.K.Chockalingam

For Respondent : Mr.V.Sasikumar

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 07/01/2023 passed in IA No.451 of 2022 in OS No.359 of 2014 by the Principal District Munsif, Thirumangalam.



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2. The facts in brief:-

Suit in OS No.359 of 2014 was filed by the respondent herein seeking the relief of declaration that the portion marketed as 'ABCD' in the rough sketch is a common pathway; permanent injunction for removal of the wall put up by the defendants in the suit property and for costs. The defendants entered appearance, filed their written statement. After framing issues, trial commenced and posted for argument after completing the evidence. At that time, petitions in IA Nos.450 of 2022 and 451 of 2022 were taken out by the petitioner to reopen the evidence and for appointment of Commissioner namely fresh Commissioner to measure the property. That came to be allowed by the trial court and one Mr.B.Sivakumar, Advocate was appointed as Commissioner.

3. Against the order passed in IA No.451 of 2022, this civil revision petition is preferred.

4. Heard both sides.

5. As mentioned in the preamble portion, the issue between the parties is with reference to the portion mentioned as 'ABCD' in the rough sketch.



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6. According to the plaintiff, it is a common pathway for both parties.

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7. It is specifically denied by the defendants. According to them, it is their exclusive property. They constructed a compound wall before 10/09/1992 itself.

8. Now the present petition is filed with the following averments:-

IA No.894 of 2017 was filed by the plaintiff seeking appointment of Commissioner. Commissioner was appointed directing him to measure the property with qualified surveyor. But without making the survey, report was filed on 07/02/2019. In the report itself, the Commissioner has stated that unless the properties are measured with the assistance of the qualified surveyor, then no final opinion can be arrived.

9. That was resisted by the petitioners herein by filing a counter.

10. The trial court after hearing both sides, by pointing out the discrepancy made by the Commissioner, appointed another Commissioner.



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11.The learned counsel appearing for the petitioners would submit that the earlier Commissioner reports were filed in 2017. The reports were marked as Exs.C1 and C2. After closing the evidence, it was posted for argument in the year 2022. Belatedly that application came to be filed.

12.No doubt there is a delay on the part of the respondents herein to file the petition. But the delay alone is not sufficient to reject the request.

13.The learned counsel appearing for the petitioners would rely up the following judgments viz, **1994 2 MLJ 382 (V.Somu Gounder Vs. S.Natesa Gounder) and Kitnammal Vs. Nallaselvan and others (2005(1) CTC 356)** for the purpose of argument that unless the earlier Commissioner report is scrapped, a new Commissioner cannot be appointed. But here, the Commissioner report is also marked as Exs.C1 and C2. But scrapping will not arise here, since as mentioned above, it is clearly observed by the earlier Commissioner that the property must be measured. So the these judgments will not help the petitioners.

14.Now the learned counsel appearing for the petitioners would submit that unless the earlier



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commissioner report is scrapped, appointment of new Commissioner is not permissible under law. Apart from that, it is also submitted that appointment of Commissioner will amount to collection of evidence.

15.I am unable to agree with the learned counsel appearing for the petitioners on this aspect. As mentioned by the trial court, the earlier Commissioner report was filed without making survey with the qualified surveyor. When both parties are claiming rival title over the property, unless it is measured with reference to their title documents, a finality cannot be arrived at. This will not amount to collection of new evidence. Moreover, scrapping of the earlier Commissioner report is also not warranted in view of the specific observation made by the earlier Commissioner that the measurement is required with the assistance of a qualified surveyor. But what happened to the earlier Commissioner is not known.

16.But however, considering the above said factual aspects, unless survey is undertaken with the qualified surveyor, the issue between the parties could not be resolved. This will help the court to record a just conclusion.



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17.On that account, I find no reason to interfere into the order passed by the trial court.

18.In the result, this civil revision petition fails and the same is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

05/06/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal District Munsif,
Thirumangalam,
Madurai District.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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