



C.R.P.(MD)Nos.2560 & 2561 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 27.11.2023

Delivered on : 16.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(PD)(MD)Nos.2560 and 2561 of 2023

and

C.M.P(MD)No.13235 of 2023

1.Venkatraman

2.Madhavan

3.Hari Baskar

: Petitioners/Petitioners/Plaintiffs
(in both petition)

Vs.

1.M.A.Abdul Salam

2.M.A.Mohammed Hanifa

3.M.A.Abbas

: Respondents/Respondents/Defendants
(in both petition)

Common Prayer : These Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and executable order, dated 23.03.2023 passed in the applications in I.A.Nos.1 and 2 of 2022 in O.S. No.193 of 2021 on the file of the Sub Court, Keeranur.

(in both petitions)

For Petitioner : Mr.J.Barathan

For Respondents : Mr.R.Anand, for R1 to R3



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ORDER

These Civil Revision Petitions are directed against the order passed in I.A.Nos.1 and 2 of 2022 in O.S.No.193 of 2021, dated 23.03.2023 on the file of the Sub Court, Keeranur, dismissing the petition filed under Section 151 C.P.C., to scrap the report of Advocate Commissioner, dated 05.08.2022 and the petition filed under Order 26 Rule 9 of C.P.C for appointing a new Advocate Commissioner for measuring the properties of both parties.

2. The revision petitioners as plaintiffs have filed the suit to declare that the suit properties are belonging to them and for permanent injunction restraining the defendants and their men from in any manner interfering with the plaintiffs peaceful possession and enjoyment of the suit property.

3. It is not in dispute that the plaintiffs have earlier filed a petition in I.A.No.2 of 2021 for appointment of Advocate Commissioner and the Advocate Commissioner appointed in the said petition has filed his report with plan on 05.08.2022. Thereafter, the plaintiffs have filed the present two applications, one in I.A.No.1 of 2022 to scrap the Advocate Commissioner's



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report, dated 05.08.2022 and the second one for appointment of another Advocate Commissioner for measuring the properties of both parties.

4. The respondents/defendants have filed their counter raising serious objections. The learned trial Judge, after enquiry, has passed the separate orders, dated 23.03.2023, dismissing both the petitions. Aggrieved by the orders of dismissal, the plaintiffs have preferred the present revisions.

5. The case of the revision petitioners/plaintiffs is that the Advocate Commissioner, who was appointed in I.A.No.2 of 2021, had inspected the suit properties on 16.07.2022 in the presence of both parties and their respective counsels; that the plaintiffs have taken a stand that the defendants have encroached in their properties and the same has got to be found out by measuring the properties of both the parties, but inadvertently in the commission application, they have prayed that their properties alone have to be measured; that the plaintiffs' counsel at the time of inspection have submitted a memo to the Advocate Commissioner requesting him to measure the properties of the defendants to find out the encroachments, if any, that the Advocate Commissioner has not chosen to measure the properties of the defendants, that the Commissioner has filed his report according to his



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whims and fancies and without giving any response to the memo of instructions given by their side; that the plaintiffs have also filed their objections to the Advocate Commissioner's report and that since the Court has not passed any orders, they were constrained to file the above application seeking orders for scraping the report filed by the Advocate Commissioner on 05.08.2022.

6. Even according to the revision petitioners/plaintiffs, in their commission petition in I.A.No.2 of 2021, they have only prayed for measuring their property and they have not claimed any prayer for measuring the properties of the defendants. It is not in dispute that commissioner warrant was issued by the Court, directing the Commissioner to measure the properties of the plaintiffs. Since the concerned Court has issued warrant to the Advocate Commissioner to measure the properties of the plaintiffs only and in the absence of any specific direction of the Court to measure the properties of the defendants, the Advocate Commissioner cannot be expected to measure the properties of the defendants despite the memo of instructions given by the plaintiffs side and as such, the action of the Commissioner in measuring the properties of the plaintiffs only cannot be found fault with. Except the above, the plaintiffs have not canvassed any other valid reason or ground to scrap the Commissioner's report.



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7. When the matter was taken up for hearing on 27.11.2023, the learned counsel for the revision petitioners would submit that scraping of the Commissioner's report is not necessary, but the Advocate Commissioner, who was appointed in I.A.No.2 of 2021 may be directed to measure the properties of both the parties. Considering the above, this Court is not inclined to interfere with the order of the trial Court in dismissing the petition for scraping the Commissioner's report.

8. Now turning to the second application for appointment of new Advocate Commissioner for measuring the properties, as already pointed out, the learned counsel for the petitioners have now prayed for re-issuance of commissioner warrant to the same Advocate Commissioner with a direction to measure the properties of both the parties.

9. No doubt, the learned counsel for the respondents have raised objections to the suggestion made by the learned counsel for the revision petitioners, but in my considered view, the objections are formal in nature.

10. As already pointed out, the plaintiffs have alleged that the defendants have encroached in the properties of the plaintiffs and to find out the same, the properties of both the parties have to be measured.



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11. No doubt, as per the Commissioner warrant already issued, the Advocate Commissioner has already visited the property and measured the properties of the plaintiffs and on that basis, he has filed his report and plan on 05.08.2022.

12. Considering the entire facts and circumstances of the case, the stand of the plaintiffs with regard to the alleged encroachment made by the defendants and also taking note of the fact that the prayer for scraping the earlier Commissioner's report is rejected, this Court is inclined to direct the trial Court to re-issue the commissioner warrant to the same Advocate Commissioner, who filed his report and plan on 05.08.2022 with a direction to measure the properties of the plaintiffs as well as the defendants with the help of qualified surveyor and to fix the Commissioner's remuneration and also time limit for filing additional report of the Commissioner.

13. The learned Subordinate Judge, Keeranur, is directed to re-issue the commissioner warrant to the same Advocate Commissioner, who filed his report and plan on 05.08.2022 with a direction to measure the properties of the plaintiffs as well as the defendants with the help of qualified surveyor



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and to file a report with plan. The learned Subordinate Judge is further directed to fix the Commissioner's remuneration and also time limit for filing report of the Commissioner.

14. With the above observation and direction, the Civil Revision Petition in C.R.P.(MD)No.2561 of 2023 is disposed of. The Civil Revision Petition in C.R.P.(MD)No.2560 of 2023, is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

16.02.2024

NCC : yes/No
Index : yes/No
Internet : yes/No
das

To

- 1.The Subordinate Judge, Keeranur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery order made in
C.R.P.(PD)(MD)Nos.2560 and 2561 of 2023

Dated : 16.02.2024