

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF
PADMANABHAPURAM.

Present: Thiru.A.Maruthupandi, B.Com., B.L.,
Additional District Munsif .(Full Additional Charge)

Monday, the 27th day of February 2023

I.A. No. 04 of 2022

in

O.S. No. 116 of 2019

Thankamony

..Petitioner/Plaintiff

/ Vs. /

Ramakrishnan

.. Respondent/Defendant

This petition is coming before me for final hearing in the presence of Mr.S.Alwin Vethamoni, learned counsel for the petitioner/plaintiff and Mr. K.Gopakumar, learned counsel for the respondent/plaintiff. Upon hearing the counsel on both side and on perusal of the records stood over for consideration till this day, this court passed the following :-

ORDER

This petition is filed under Section 151 of Civil procedure Code to receive the objection to the Commissioner's report and plan .

2. THE AVERMENTS IN THE PETITION IN BRIEF :-

The petitioner/plaintiff is filed a suit for declaration of easementary right over the plaint 'B' schedule property and for injunction. The petitioner/plaintiff filed an application to appoint an Advocate commissioner and this court to appoint an Advocate commissioner to note the points mentioned in the commission application. Accordingly an advocate commissioner was appointed in the suit and he has filed his report and plan on 31.03.2021. The petitioner/plaintiff a senior citizen now aged 67 years. Due to covid-19 the petitioner /plaintiff was not able to meet his advocate for a long time . As such the petitioner/plaintiff was not able to come to know about the report and plan by the advocate commissioner immediately after the filing of the report and plan by the Advocate commissioner. Now, the suit stands posted to today 16.02.2022 for trial. When his Advocate has been going through the report and plan filed by the Advocate commissioner, he has noticed that some material facts were failed to be noted and the commissioner has filed the report against the actual lie of the property and the material facts. As such petitioner/plaintiff have got serious objections to the report and plan filed by the Advocate commissioner. As such the petitioner/plaintiff filing his objection to the report and plan filed by the Advocate commissioner along with an application to receive the same. Hence, this petition.

**3. THE AVERMENTS IN THE COUNTER FILED BY PETITIONER/
PLAINTIFF IN BRIEF :-**

The Advocate commissioner has filed her report on 30.03.2021 all along the petitioner/plaintiff has not filed any objection. The petitioner/plaintiff expected a plan as he likes from the commissioner. Due to Oochi Cyclone the barred wire fence of respondent/defendant was damaged in part and it was damaged by the petitioner/plaintiff with the view to claim easement right. Now, after three years the petitioner/plaintiff has come forward with an objection for the commissioner's report. The allegation made against the Advocate commissioner is that the Advocate commissioner has brought two surveyors, which is not correct. Whomever may be the surveyor he has to execute his works as per the direction of the advocate commissioner and not otherwise. Now, the petitioner/plaintiff has no case and that's why he has filed this objection without any truth and the same cannot be accepted. Hence, this petition liable to be dismissed.

4. POINTS FOR DETERMINATION :-

Whether the petitioner/Plaintiff is entitled to the relief as prayed for or not?

5. DISCUSSION AND ANALYSIS :-

Both side Heard. Records perused carefully.

On perusal of an affidavit the reasons for non filing of an objection between the period of 31.03.2021 to 30.07.2021 i.e., for the past 3 months is a reasonable one, but after that the Lockdown is lifted, so the reasons for delay in filing an objection between the period of 30.07.2021 to 17.02.2022 i.e., till filing this petition is not a reasonable one, but in the interest of justice and to give a chance to the petitioner/plaintiff this court is inclined to allow this petition with a cost of respondent/defendant.

Hence, a cost of Rs.1000/- to be paid to the respondent/defendant on or before 20.03.2023 or otherwise it shall stand dismissed. Call on 21.03.2023.

Written by me, typed by the steno-typist in computer, corrected and pronounced by me in open court, on this 27th day of February 2023.

Additional District Munsif (FAC),
Padmanabhapuram

ADMC, Padmanabhapuram.

I.A.No.04/2022 in O.S.No.116/2019
Draft/Fair Order:
Dt: 27.02.2023.