

**IN THE COURT OF THE DISTRICT MUNSIF,
ERANIEL.**

Present: **Thiru. A. Maruthupandi, B.Com., B.L.,**
District Munsif, Eraniel. (F.A.C.)

Friday, the 12th day of July 2024

I.A.No.02/2022

in

O.S.No.85/2012

Govindara

... Petitioner/Defendant

Vs.

1. Thangam

2. Ganesan

3. Jegan

4. Jose Jayaseelan

... Respondents / Plaintiffs

This petition is coming before me for final hearing in the presence of Mr.N.S.Arumugavel, learned counsel for the Petitioner / Plaintiff and Mr.M.Thangaraj, learned counsel for the Respondents / Plaintiffs and on perusal of the case records and having stood over for consideration till this day, this court delivered the following

Order.

This petition is filed under Order XXVI Rule 10(2) & Section 151 of the code of Civil Procedure to permit the petitioner to examine the commissioner in open court touching the objections raised to the interim and final commission report for the purpose of set-aside the interim, final commission report and plan and render justice.

2. THE AVERMENTS IN THE PETITION IN BRIEF:-

(i) The petitioner is the defendant in this suit and petitioner herein. He was well acquainted with the facts of the case. In this case an Advocate / Commissioner was appointed in I.A.No.384/2013 for local investigation for the purpose of elucidating the matter in dispute. But the Commissioner had acted in a blas manner and filed his interim report as well as the final report by concealing relevant materials facts. The Commissioner had traversed beyond the scope of the pleadings in the Commission application, plaint and rough sketch annexed with the plaint and trying to trace out imaginary facts to support the plaintiff's case.

(ii) He has already on 25.09.2012 filed his objection to the Commissioner's interim report as IA.No.385/2013, to appoint another fresh commission as iA.No.386/2013. This court dismissed all the applications on the ground that "the commissioner is not yet completed his work and he filed only interim report and further the commissioner did not file his final report and plan and at this stage the question of set aside the commissioner interim report cannot be raised and it is not sustainable". Now the commissioner has filed his final report and plan in a blased manner. He have on 02.08.2022 filed his serious objections to the commissioner's final report and plan. He raised objections on 13 points to the final report. That may be read as part of this affidavit. Since the Commissioner's interim report as well as the final reports are totally false, blased, irrelevant and highly contentious, and that both have to be rejected to toto in the interest

of justice. The interim and final reports of the Commissioner are found unreliable and unhelpful for the Court in adjudicate the matter in dispute in a just and proper manner. For the ends of Justice the reports of the commissioner are required to be fair and unblasted. But the commissioner failed to acts fairly and satisfactorily.

(iii) The joint perusal of photographs filled along with the written statement and counter claim, the memo submitted to him and his answers in the interim-commission report and in the final report and plan apparently show the bias attitude of the commissioner. More over he has ready to cross examine the commissioner to elicit his biased attitude and unfairness. On 23.09.2012, the commissioner had visited the suit property for the purpose of measuring the suit property and for filing final report. At the time of his visit, his Advocate submitted a memo asking the commissioner to note 5 points. The plaintiff's learned counsel, after going through the said memo, asked the commissioner to measure the plot No.1 mentioned in a partition deed as per the rough sketch annexed with the document. To that effect he submitted a memo. The plaintiff's counsel compelled the commissioner to measure first the plot No.1, which is not the subject matter of the suit, and then to measure the "B" schedule property. So his counsel submitted another memo, to request the commissioner to measure Plot No.1 based on the Re-survey plan because the plan annexed with the said partition deed does not bear the cross measurements for fixing the points accurately.

(iv) The commissioner, without applying his mind in the matter in dispute and without considering the scope of the commission application and also of the convincing facts brought before the commissioner by his counsel refused to measure the plaint 'B' schedule property as mentioned in the commission application. The plaint 'B' schedule property is 1 cent of property sold by the defendant's father with well defined four boundaries mentioned in the sale deed. The plaintiff also described the plaint "A" and "B" schedule properties in the plaint, and annexed a rough sketch with the plaint. In this context, there is no difficulty for the commissioner to identify and measure the plaint schedule properties without measuring Plot No.1 mentioned in the partition deed. The commissioner tried to exceed his power and insisted to measure, on the basis of rough sketch, the plot No.1 which is not the subject matter of the suit and no relevancy is attached with it. The commissioner, without measuring the suit property and without note down the 5 points asked by the defendant, left the suit property. The commissioner did not act as a commissioner, but act as a party to the suit. The commissioner filed a false memo before this court on 25.09.2012 as if his advocates prevent him from executing his work. This court recorded the memo on 05.02.2014 and granted police aid to the commissioner. The commissioner visited the suit properties on 07.08.2021 and filed his final report.

(v) The compound wall was not constructed in "B" schedule property as alleged in the report, but it was constructed within the boundary of defendant's property. The compound wall was constructed to the full shape even at the time of 1st visit, but the commissioner stated that an

attempt was made to construct a compound wall. The length of the damaged compound wall was not correctly mentioned. The quantum of damage caused was also not correctly assessed and mentioned. No encroachment was made at the south western corner of "B" schedule property as falsely mentioned. Correct plan with correct measurement was not produced. The correct area as per the plan annexed with partition deed and the area as per resurvey plan were not mentioned. The result of the Commissioner's local investigation is found unsatisfactory and biased and hence it is extremely necessary to examine the commissioner personally in open court touching the objections already raised to the interim and final reports.. If the commissioner is not examined in open court so as to bring the truth before the court, he will be put to irreparable loss and injury. Hence, this petition.

3. Counter filed on the side of Respondents:-

(i) The averments in the affidavit and petition are devoid of truth. The averments in paras 3 and 4 of the affidavit stating that "The commissioner had acted in a bias manner and filed his interim report as well as the final report by concealing relevant material facts are utter falsehood. The Advocate / Commissioner is the officer of the court, appointed by the court to execute the commission work in IA.No.156 of 2012. The commissioner has not inverted beyond. The scope of the pleadings in the commission application, plaint and plaint rough sketch annexed with the plaint and trying to trace out imaginary fact to support the

plaintiffs case. There is no pleading in the affidavits stating that, the Advocate/Commissioner is enemical to the defendant to act in a bias manner. The commissioner has filed interim report and final report by visiting the suit properties in the presence of the petitioner and his two advocates, the plaintiffs and their advocates.

(ii) As the defendant and his two Advocates have prevented the commissioner to execute the commission work, the commissioner has filed a memo before the court to give police protection at the time of the commission work. Accordingly the court has issued police protection order to the Colachel Police. The Sub Inspector of Coachel Police Station came to the suit property on 07-08-2021 and in the presence of the defendant and his two Advocates, the plaintiffs and their advocates, the commissioner has measured the suit properties with the assistance of a qualified surveyor and completed his work and filed the final report before this court.

(iii) The averments in para 5 of the affidavit are derived except the filing of false and vexatious objection to the interim report of the commissioner and to appoint another fresh commission. The court dismissed all the applications on the ground that the “Commissioner is not yet completed his work and he filed only interim report and further the commissioner did not file his final report and plan and at this stage the question to set aside the commissioner’s interim report cannot be raised and it is not sustainable”. The Commissioner has not filed his report and plan in a biased manner. For the final report and plans also the petitioner has filed false and vexatious objections to prolong the suit. The commissioner’s

interim report as well as final reports are not totally false, biased, irrelevant and highly contentious. Both need not be rejected in toto. The interim and final reports of the Commissioner are not found unreliable and unhelpful for the court to adjudicate the matter in dispute in a just and proper manner. The commissioner has filed the interim report and final report and plan stating the actual facts at the spot. The commissioner has visited the suit properties after issuing notice to the petitioner's counsel and the respondents counsel and visited the suit properties in the presence of the petitioner and his advocates and noted the actual position of the suit properties and filed interim report before the court stating the true facts found at the spot.

(iv) The petitioner as petitioner filed C.R.P.(MD)Nos.1006 to 1008 of 2014. M.P.No.1 of 2014 before the Hon'ble Madurai Bench of Madras High Court over the dismissal of the three applications filed by the petitioner to scrap the interim report of the commissioner, for appointment of another Advocate/Commissioner, and to summon the Advocate/Commissioner and permit the petitioner to examine the Advocate/Commissioner. In page 8 of the order the Hon'ble High Court has clearly held that "Therefore before the court decides about the appointing or rejecting the report, question of appointing another Advocate/Commissioner or re-issue of warrant to the same commissioner does not arise.

(v) In the present case Advocate/Commissioner is yet to execute the warrant fully. He has filed only an interim report. He has prayed for

further direction to completely execute the warrant of commission, unable the Advocate/Commissioner files his report, the petitioner is not entitled to seek the relief sought for in these applications. Therefore, he hold that there is no infirmity or illegality in the order passed by the trial court. In the result all the Civil Revision Petitions are dismissed on 25-08-2014. Consequently, connected miscellaneous petitions also are dismissed.

(vi) The petitioner with malicious intention and to protract the proceedings filed the above stated three petitions. The petitioner has suppressed his filing of C.R.P.(MD) Nos.1006 to 1008 of 2014 and MP (MD) No.1 of 2014 before the Hon'ble High Court and its dismissal dated 25-08-2014. The Commissioner has filed the interim report, final report and plan fairly by visiting the suit properties and by measuring the suit properties in the presence of the petitioner and his Advocates. The Commissioner cannot prepare report and file report and plan on the direction of the petitioner and his Adovates, as he has done the work fairly by stating the true facts available at the spot. The averments in para 6 of the affidavit are denied. No bias attitude was exerted by theAdvocate / Commissioner against the petitioner. Nowhere in the affidavit the petitioner has stated that the Advocate / Commissioner is enemical to him.

(vii) The averments in para 7 of the affidavit are denied except the visit of the Commissioner on 23-09-2012 for filing the final report. As the petitioner and his Advocates have prevented the Commissioner is executing his work, the commissioner has filed a memo before the Court to issue police help in executing the work. This court has ordered police help and

on 23-09-2012 after issuing notice on both sides with the assistance of the Sub Inspector of Colachel Police Station, the surveyor to measure the suit properties, the Commissioner has measured in the presence of both parties and both the Advocates and measured the A-Schedule property in the plaint and to find out plaint A-schedule property the Commissioner has measured plot 2 in the partition deed property of the partition deed dated 14-09-1989. To locate the plaint 'B' schedule property having an extent of one cent on the south eastern side of plot No.1, the Commissioner has measured plot 1 in the partition deed and located the one cent plaint 'B' schedule property.

(viii) The averments in para 8 of the affidavit are denied. The Advocate / Commissioner by applying his mind and knowing the actual dispute, by replying for the facts sought for on both sides has executed the Commission work, also by measuring and locating plaint 'B' schedule property. The averments in para 9 of the affidavit are wrong. The petitioners' father Mr.Chellappan has executed a sale deed on 01-03-1994 in favour of j.Patric Julion and V.Vijaya Kumar over one cent property on the south eastern corner out of his property i.e. 1 Acre 67 cents and 750 sq. Links which is Resurvey No.254/1A. This one cent property was purchased for the purpose of pathway. To measure and locate the one cent property correctly, the Commissioner has measured and located plot one in the partition deed dated 14-09-1984. The Advocate / Commissioner has done the work as a Commissioner not acted as a party to the suit. As per the order of appointment by the Court, he has visited the suit properties and done his commission work. Since the petitioner and his two Advocates have prevented the Commissioner in executing the work, he has filed a

memo of instructions before the court and the Court has issued the Colachel Police to give Police protection to the Commissioner while doing his commission work in the suit properties. On the 3rd day of his visit the Commissioner has done the Commission work with the assistance of a surveyor along with the help of the Sub Inspector of Colachel Police Station and completed his commission work.

(ix) The averments in para 10 of the affidavit are denied. The compound wall was constructed in the plaint 'B' schedule property with an intention to reduce the breadth of the plaint 'B' schedule property. Knowing the filing of the suit, the petitioner and his men started construction of compound wall by intruding into the plaint 'B' schedule property. Hence on the side of the plaintiffs gave a memo before the Commissioner to visit the suit properties urgently. Hence by issuing notice on both sides the Commissioner in the evening of the date of filing of the suit, visited the suit properties, in the presence of the plaintiffs, their Advocates, the defendant and their Advocates and filed interim report stating the real facts. Correct plan was produced by stating the correct measurement at the spot.

(x) The averments in para 11 of the affidavit are denied. The reports and plans were submitted by the Commissioner. There is no necessity to set aside the interim and final reports of the commissioner. If a fresh advocate is to be appointed as second commissioner, such advocate cannot assess the position of plaint 'B' schedule property on the date of filing of this suit. The averments in para 11, 12 of the affidavit and the prayer to the

petition are denied. The commissioner has filed interim report and final report by stating the true facts. Hence, he need not be examined. Hence, this court may be pleased to dismiss I.A.No.2 of 2022 with costs to the respondents.

4. POINTS FOR DETERMINATION:-

Whether the Petitioner / defendant is entitled to the relief as prayed for or not ?

5. DISCUSSION AND ANALYSIS:-

Petitioner's side heard. Respondents' side not argued. Records perused carefully.

(i) The counsel for the petitioner argued that an Advocate / Commissioner was appointed in I.A.No.384/2013 for local investigation for the purpose of elucidating the matter in dispute. But, the Commissioner had acted in a bias manner and filed his interim report as well as the final report by concealing relevant materials facts. The Commissioner had traversed beyond the scope of the pleadings in the Commission application, plaint and rough sketch annexed with the plaint and trying to trace out imaginary facts to support the plaintiff's case.

(ii) The learned counsel for the petitioner further argued that the petitioner's side already filed an objection to the Commissioner's interim report then he had filed an applications to reject the Commissioner's interim report as IA.No.385/2013, to appoint another fresh commission as

iA.No.386/2013. This court dismissed all the applications on the ground that “the commissioner is not yet completed his work and he filed only interim report and further the commissioner did not file his final report and plan and at this stage the question of set aside the commissioner interim report cannot be raised and it is not sustainable”. Now the commissioner has filed his final report and plan in a biased manner. He have filed his serious objections to the commissioner’s final report and plan. He raised objections on 13 points to the final report. Since, the Commissioner’s interim report as well as the final reports are totally false, biased irrelevant and highly contentious, and that both have to be rejected in the interest of justice. The interim and final reports of the Commissioner are found unreliable and unhelpful for the Court in adjudicate the matter in dispute in a just and proper manner. Hence, this petition. In the said circumstances, it is just and necessary to grant a relief as prayed for and more over if this petition is allowed no prejudice would be caused to the respondent. So that this court is inclined to allow this petition.

6.DECISION:-

In the result, petition is allowed.

Dictated by me, typed by Steno-Typist in computer, corrected and pronounced by me in open court, on this the 12th day of July 2024.

Sd/-A.Maruthupandi,
District Munsif,
Eraniel (FAC).

True copy

D.M.C. Eraniel.
I.A.No.02/2022
in
O.S.No.85/2012
Fair/Draft order
Dated 13.07.2024