

In the Court of the District Munsif Cum Judicial Magistrate, Krishnarayapuram

Present: Thiru G.Ashok Prasath B.A.B.L., M.S.E.N.,

District Munsif Cum Judicial Magistrate

Wednesday 01st March 2023

IA.No:4/2022 in IA.No:2/2021 in OS.No:217/2021

Rathinam

....Petitioner/Plaintiff

Vs

Vijayakumar

....Respondents/Defendants

This Petition came before me for a final hearing on 01.03.2023 in the presence of the Learned Counsel Mr.R.M.Senthil appearing for the Petitioner and the Learned Counsel Mr.V.R.Balasubramanian appearing for the Respondent and thereby hearing the arguments of both sides and perusal of records, this court has been delivering the following

ORDER

1. Petition filed under section 151 of CPC
2. The Brief Averments of the Petition are as follows,
3. It is stated that the petitioner herein and the plaintiff in the suit. The petitioner filed a suit for declaration, recovery of possession and permanent injunction against the respondents.
4. The respondent encroached on the suit property for which Advocate/ Commissioner Mr.M.Arun was appointed to inspect the suit properties in I.A.No.02/2021. Further, the Advocate/ Commissioner stated in his report that, there was 10 feet of land existing on the Northern side without measuring the suit property. Moreover the Advocate/ Commissioner

mentioned to add necessary parties to the suit proceedings and there was a Beetal bushes, so unable to measure the suit properties.

5. The Advocate/Commissioner further stating the surveyor FMB was not filed. So that itself amounts to suppression of facts. Even after one year the Advocate/Commissioner had not properly inspected the suit property and thereby filing an incompleted report, he failed to follow the directions of this Court. The Advocate/Commissioner had not co-operated to inspect the suit property, it is therefore report filed by the Advocate/Commissioner in a proper and full fledged manner. Therefore, the report of this Commissioner to be scrapped. Hence the petition.
6. The Brief Averments of the Counter filed by the Respondent
7. Whereas the other side stated that the petition is not maintainable. All the allegations stated in the petition were denied as false except a few were admitted as true. Further, the Advocate/ Commissioner's report to be scrapped and thereby appointing a new Advocate/ Commissioner is not proper within the frame of law. The written statement may be treated as a part and parcel of the counter. It is therefore the petitioner adopting delaying tactics and prolong the proceedings of this case. Hence this petition is liable to be dismissed with cost.
8. Heard both sides, Records Perused, and No oral and documentary evidence adduced on both sides. Whether this Petition deserves to be allowable or not?
9. In the above aspects of grounds, the petitioner side stated that the Advocate/Commissioner has not properly inspected the suit property and thereby stating to add necessary parties in the suit. Further, the Advocate/Commissioner mentioned 10 feet on the Northern side without measuring the suit property, the Advocate/Commissioner has not filed the proper

report and also failed to file the FMB sketch. There is also a serious objection raised by the other side, it is clear that the Advocate/Commissioner has not properly inspected the suit property and also stating necessary parties to be added in the suit, which is unwarranted because the Advocate/Commissioner's duty is only to inspect the disputed property and thereby elucidate the matter in dispute between the parties. If at all there is any kind of problems faced by the Advocate/Commissioner, and the same may be reported before the Court. But there is no any kind of response from the Advocate/ Commissioner.

10. So therefore the Advocate/Commissioner's report also not been fulfilled report in respect of the core issue of this case, therefore in view of the above stated reasons, the Advocate/ Commissioner's report is scrapped.

11. As a result, of the above stated reasons this petition stands allowed. No cost.

This order was dictated to the typist and typed by typist and necessary corrections were made and the same was pronounced in the open court on 01st March 2023

**District Munsif Cum Judicial Magistrate
Krishnarayapuram**

Annexures

Petitioner's side Oral and Documentary Evidence: Nil

Respondent's side Oral and Documentary Evidence: Nil

**District Munsif Cum Judicial Magistrate
Krishnarayapuram**