

(2013) 04 MAD CK 0281

In the Madras High Court

Case No : C.R.P. (PD) No. 1351 of 2011 and M.P. No. 1 of 2011

Kasthurirangan

APPELLANT

Vs

Commissioner, Arcot Municipality

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Citation : (2013) 5 MLJ 310

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : P. Mani, for the Appellant; M. Venugopal, for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandrababu, J.—The present Civil Revision Petition is filed against an order made in I.A. No. 164 of 2009 in O.S. No. 108 of 2007 on the file of the District Munsif Court, Arcot, wherein and whereby the application filed by the petitioner seeking for re-issuance of Commission to inspect the suit property has been rejected. The petitioner herein filed a suit in O.S. No. 108 of 2007 on the file of the District Munsif Court, Arcot seeking for declaration of his right and title over the ABCD marked portion of the suit property, permanent injunction and also for mandatory injunction directing the respondent/defendant to remove the pipe lines laid in the ABCD marked portion of the suit plan. Pending disposal of the suit, the petitioner filed an application in I.A. No. 128 of 2009 for appointment of an Advocate Commissioner. The said application was allowed by the Court below and an Advocate Commissioner was appointed, who also inspected the suit property and filed a report on 7.10.2009. Thereafter, the present application was filed by the petitioner herein seeking for re-issuing warrant to the Advocate Commissioner to inspect the suit property once again and file a report. The said application was resisted by the respondent Municipality. The Court below found that the application was filed only with an intention to drag on the proceedings rather than to meet the ends of justice. It is also found by the Court below that the partition deed dated 18.9.1903, based on

which the petitioner seeks for re-issuance of warrant, has no ward number nor there was any block number or survey number given so as to enable the Advocate Commissioner or the surveyor to measure the suit property.

2. Learned counsel for the petitioner submitted that the Advocate Commissioner sought assistance of the surveyor of the respondent Municipality and therefore when the suit itself is filed against the Municipality, his assistance ought not to have been taken for measuring the property. It is also his contention that the partition deed dated 18.9.1903 was not taken note of at the time of making the inspection.

3. Per contra, the learned counsel appearing for the respondent Municipality submitted that the surveyor of the Municipality is the proper person from whom assistance can be taken by the Advocate Commissioner and accordingly his assistance was taken. Merely because, he is an employee of the respondent Municipality, such assistance cannot be put against the report filed by the Advocate Commissioner.

4. Heard the learned counsel appearing for the respective parties.

5. It is seen that the suit filed by the petitioner is one for declaration, permanent injunction and also for mandatory injunction. Already, an application filed by the petitioner seeking for appointment of the Advocate Commissioner was allowed in I.A. No. 128 of 2009. It is also seen that the Advocate Commissioner has filed a report on 7.10.2009. It is also represented before this Court that the petitioner has already filed an objection to the report filed by the Advocate Commissioner. If that be the position, it is for the Court below to consider the report of the Advocate Commissioner as well as the objection filed by the petitioner and thereafter to decide the issue based on the materials placed before the Court. When I perused the affidavit filed in support of the application filed seeking for re-issuance of warrant, I find that certain allegations are made by the petitioner to seek re-issuance of warrant to the Commissioner. If at all he is aggrieved, it is for him to file his objection to the Commissioner's report, which he has already done by filing an objection before the Court below. It is for the Court below to either accept the report or reject the same based on the objections raised by the petitioner. When that being the factual position, seeking re-issue of warrant to the Commissioner does not arise at this stage. I find no irregularity or infirmity in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected M.P. is closed. No costs.