

(2012) 09 MAD CK 0056

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 637 of 2010

Ramasamy and Jagathambal

APPELLANT

Vs

Poonkhodi

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Citation : (2012) 09 MAD CK 0056

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : J.S. Mahalingam, for the Appellant; S. Kamadevan, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice M. Venugopal

1. The Petitioners/Defendants have preferred the present Civil Revision Petition as against the order dated 28.07.2009 in I.A. No. 469 of 2009 in

O.S.No. 165 of 2008 passed by the Learned District Munsif, Perambalur. The Learned District Munsif, Perambalur while passing the orders in

I.A. No. 469 of 2009 in O.S.No. 165 of 2008, has, among other things observed that "Petitioners and the Respondent have admitted that there

are mistakes in the surveyor report, plan and the surveyor plan and as such, in the interest of justice has ordered for reissue of commissioner

warrant by directing the earlier commissioner to inspect the suit property with the help of District surveyor inspector and to submit his report along

with plan and measurements and also determined his remuneration at Rs. 1000/-.

2. The Learned Counsel for the Revision Petitioners/Defendants submits that the

Learned District Munsif has committed an error in holding that the error in marking the place as ABCD instead of CDEF is wrong on the face of it.

3. It is the further contention of the Petitioners that entire survey of the suit property its exact measurement, sketch and field map have already been filed for the purpose of deciding the suit, but this material aspect of the matter has not been appreciated by the Learned District Munsif, Perambalur in a proper and real perspective.

4. It is not in dispute that earlier advocate commissioner has inspected the suit property and has furnished its measurement, sketch and field map before the trial Court. The Petitioners/Defendants in their counter to I.A. No. 469 of 2009 in paragraph 3 have averred that in the Commissioner's plan, it should have been mentioned as C.D.E.F, the suit property in survey No. 467/8 and that, it has been wrongly mentioned as A.B.C.D and except this, there are no other mistakes.

5. The mistake pointed out as aforesaid by the Petitioners/Defendants in their counter at paragraph 3 in I.A. No. 469 of 2009 is only a trivial matter and this can be set right by examining the Advocate Commissioner who furnished the report at the time of conduct of the main suit.

6. The said advocate commissioner can be examined as a Court witness and through his evidence the mistake occurred in his report in regard to the description of the property wrongly mentioned as A.B.C.D can be corrected as C.D.E.F. It is open to the concerned party/parties to cross-examine the commissioner. The trial Court is directed to provide adequate opportunities to examine and cross examine the Commissioner in the manner known to law and in accordance with law.

7. In that view of the matter, the permission sought for by the Respondent/Plaintiff in I.A. No. 469 of 2009 to reissue the commissioner warrant is not a valid one in the eye of Law. Consequently, this Court interferes with the said order passed by the trial Court in I.A. No. 469 of 2009 and sets aside the same in the interest of justice. Consequently, the Civil Revision Petition is succeeds.

8. In the result, the Civil Revision Petition is allowed, leaving the parties to bear their own costs. The order passed by the District Munsif Court, Perambalur in I.A. No. 469 of 2009 in O.S.No. 165 of 2008 dated 28.07.2009 is hereby set aside for the reasons assigned by this Court in this

Civil Revision Petition. Further, Liberty is granted to the parties to examine the advocate commissioner as Court witness in regard to the report submitted by him along with plan and parties are given the liberty to cross examine the commissioner, since an Advocate Commissioner is an Officer of Court. The trial Court is directed to take note of the inadvertent error which has crept in the plan submitted by the Advocate Commissioner, wherein he has instead of describing the suit property as C.D.E.F in survey No. 467/8 as wrongly mentioned it A.B.C.D. Also, the trial Court is directed to provide enough opportunities to the parties in this regard to examine and cross examine the Advocate Commissioner. The trial Court shall take into consideration of the oral evidence of the commissioner, together with the report and plan submitted by him along with the other available oral and documentary evident to be let in and to be marked or otherwise on record. Also, the trial Court is directed to dispose of the main suit in accordance with law within a period of 6 months from the date of receipt of a copy of this order.