

**03.04.2013:-**

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 515/13.

This order arises out of petition filed by the plaintiff with a prayer to issue a fresh writ of survey commission to the Circle Officer, East Circle, Jorhat to submit a detail and comprehensive report to elucidate the matter raised in the additional issue read as “whether the defendant had put pillar two feet inside the boundary of the south west corner and one in the middle of the boundary and third post/pillar on the boundary line itself and encroached upon any portion of the suit land”. It is prayed that Commissioner may be directed to furnish fresh report by elaborately describing the exact position of the iron pillars.

Petitioners case in brief is that the Circle Officer , East Revenue Circle, Jorhat, was appointed as survey commissioner by this court directing him to furnish report in respect of the issue as stated above. It is stated that the concerned survey commissioner has furnished his report, but the said report is not accordance with the writ of survey issued to him & he has failed to discuss the vital issue regarding the location of the pillars one of which are claimed to be erected on 2(two) feet inside the boundary of the South-west corner & one in the middle of the boundary & third post/ pillar on the boundary line itself. It is further stated that the concerned survey commissioner did not put his emphasis on the said issue & has casually passed his comment that there is no encroachment done by the defendant and that at the same time he is cryptic & silent about the post erected by the defendant and the exact position of those iron pillars and also conspicuously silent about the boundary wall erected by the defendant in his report and the sketch map. It is further stated that Instant case was twice remanded by appellate court with a direction to determine the issue of encroachment afresh. And as such in order to properly adjudicate the issue of encroachment, a better survey commission, which can furnish a comprehensive report, is very much necessary.

O.P filed written objection denying and challenging inter alia the claims of the petitioner and further stated that in the instant case survey commissions were issued in two different occasions, admittedly in the similar way & for the same issue i.e. location of the pillars. It is stated that report submitted in both the occasions are submitted as per the direction made in writ. OP has further stated that in view of the above facts &

situation, issuance a fresh commission is not at all necessary & petition has been filed by the petitioner to misguide the court and worth rejection.

Plaintiff/petitioner in this regard has relied upon the following judgment passed by Madras High Court.

Vemba Gounder –vs- Pooncholai Gounder , reported in AIR 1996 Mad 347,(1996) IMLJ 426, wherein it was held that if the court is satisfied that the Report is riot satisfactory, it need not insist on the petitioner to file an application for the issue of a second Commission. It is the duty of the court to appoint a second Commissioner or remit the matter to the same Commissioner, for the Application is already there.

Whereas OP /defendants relied upon the following judgments -

K. Raghunath Rao –vs- Smt Tumula Jailaxmi reported in AIR 1988 ORISSA 30 wherein it was held that an order to issue of a commissioner to any person under Order 29, R.9, C.P.C is discretionary . Being a judicial order it is required to be supported by reasons, so that property of the exercise of discretion would be visible.

Perused the available materials on record which reveals that instant case was remanded by the appellate court with a direction to frame an issue regarding encroachment and as such the above referred additional issue was framed.

With a view to properly decide the said issue, writ was issued by this court, on two occasions, wherein commissioner was directed to submit report with sketch map specifically regarding the location of pillars from the boundary wall constructed by the defendant in the south-west corner.

Record reveals that the first commissioner report, submitted on 27-3-10, was already rejected. Whereas the subsequent was filed on 17-10-12. Perusal of report dated 17-10-12 reveals that commissioner has submitted the report by describing the area of the suit land as well as the land of the defendant in details. But the report is not specific regarding the locations of pillars in terms of the writ. It also appears that the location of the pillars were also not shown in the sketch map so as to enable this court to properly and correctly understand and appreciate the evidence on record. Record further reveals that the commissioner was examined & cross examined in respect of the report. During cross examination he admitted that he has not shown the pillars in the sketch map.

In view of the above circumstances I am of the considered opinion that inspite of specific direction in the writ, commissioner has failed to give specific & comprehensive report in terms of writ. Although it is an admitted position, report of survey commission would be assessed in the light of other evidence & materials on record ,but it is also to be kept in mind that this matter has already been remanded two

times with a direction to decide a fresh the issue of encroachment by issuing a Survey Commission.

After careful perusal of the writ and the report of the Commissioner, it reveals that either the commissioner has failed to understand the question i.e the contents of the Writ in order to give a proper answer to the issuing court or has casually submitted its report without taking due care and attention which ought to be taken care of. The public officer is supposed to act in a judicious manner to justify the spending of public money and time and any negligence or improper application of time and authority, in the present case, certainly place this court in a much inconvenient stage to decide the issue in question.

Therefore, I deem it fit & proper, for the interest of justice, to issue a fresh commission with strict direction to submit detail and comprehensive report along with sketch map to specifically and categorically answer the issue, referred above, without leaving any room for doubt. Copy of this order be sent to the Commissioner along with the Writ.

Hence, case is accordingly disposed of on contest.

**(Achma Rahman)**

**Munsiff No 1, Jorhat.**