



C.R.P(MD)No.837 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.837 of 2023

and

C.M.P(MD)No.3864 of 2023

Balasubramanai Bharathi

... Petitioner/Petitioner/
Defendant

Vs.

Kali Rathanm

... Respondent/
Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.2 of 2021 in O.S.No.111 of 2015 on the file of Additional District Munsif, Manapparai and consequently scarp the Commissioner report dated 04.07.2011 and appoint a senior Commissioner to re-enquire the schedule property.

For Petitioner : Mr.S.Chellapandian

ORDER

The present Civil Revision Petition has been filed against the order passed in I.A.No.2 of 2021 in O.S.No.111 of 2015 on the file of Additional District Munsif, Manapparai and consequently scarp the



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Commissioner report, dated 04.07.2011 and appoint a senior Commissioner to re-enquire the schedule property.

2. The petitioner is the defendant in O.S.No.111 of 2015. The said suit has been filed by the respondent herein for permanent injunction to restrain the petitioner from interfering with the peaceful possession of the suit schedule property.

3. The petitioner herein had earlier filed I.A.No.273 of 2015, which was dismissed by the trial Court. Under these circumstances, the petitioner filed CRP(MD)No.2596 of 2015, which came to be disposed of by this Court on 27.04.2019. Pursuant to the aforesaid order, an Advocate Commissioner was appointed, who has now given a report on 30.11.2019. During the interregnum, due to out break of Covid-19 pandemic, the case did not progress. The petitioner appears to have filed an objection on 26.04.2022. Since the report of the Advocate Commissioner was not available to the petitioner, the petitioner has filed I.A.No.2 of 2022, which has been now rejected by the trial Court vide impugned order, dated 23.09.2022. The trial Court has now rejected the application for scrapping the report of the Advocate Commissioner. The



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relevant portion of the impugned order reads as under:

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”6.6. நீதிமன்ற ஆணையர் அறிக்கை வரைபடம் தாக்கல் செய்தவுடன் தனது ஆட்சேபணைகளை எதிர்மனுதாரர் தாக்கல் செய்யாமல் இருந்துவிட்டு காலம் கடந்து இம்மனுவினை தாக்கல் செய்துள்ளது. எதிர்மனுதாரரின் அலட்சிய போக்கையே காட்டுகிறது. மனுதாரரின் இம்மனுவினை அனுமதிக்க எவ்வித சட்ட முகாந்திரமும் இல்லை என்றே இந்நீதிமன்றம் கருதுகிறது.

இறுதியாக மனு எதிர்மனுதாரரின் தொகையுடன் தள்ளுபடி செய்து உத்திரவிடப்படுகிறது.”

4. In my view, there is no scope for appointment of Advocate Commissioner in a dispute where relief is for a permanent injunction. It for the petitioner or the respondent/plaintiff have to merely let any evidence to show that they are in possession of the suit schedule property. The Advocate Commissioner cannot be appointed to collect evidence and thereby influence the trial. I.A.No.273 of 2015 was rightly rejected. However, the petitioner was able to secure available orders from this Court on 27.04.2019 in CRP(MD)No.2596 of 2015.

5. The report of the Advocate Commissioner, dated 30.11.2019 was not available. Therefore, the petitioner filed I.A.Nos.2 and 3 of 2022 to scrap the report. The petitioner has invited the report of the Advocate Commissioner which now apparantly is against the petitioner. It is open



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for the petitioner to make submissions regarding the incorrectness in the report of the Advocate Commissioner. There is no scope for interfering with the impugned order. In my view, it is open for the petitioner to discredit the report of the Advocate Commissioner, oral and documentary evidence may be required to establish his possession.

6. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Additional District Munsif,
Manapparai
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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