



C.R.P.(MD)No.1013 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
17.04.2023	08.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1013 of 2023

and

C.M.P.(MD)No.4762 of 2023

A.Anthonisami (Died)

J.M.R.Julia (Died)

1.A.Sampathraj

2.A.Xavier Chander

3.A.Magdeline Pamila Rani

4.A.Gerald Santharaj

5.A.Nirmala Rani

A.Jeraldin Soundararajan (Died)

... Petitioners/Petitioners/Plaintiffs

Vs.

D.Santhiyagu(Died)

1.Sagayamary

2.Rex

3.Kidiyon

... Respondents/Respondents/Defendants

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal Order dated 31.01.2023 made in I.A. No.5 of 2022 in O.S. No. 716 of 1998 on the file of the I Additional District Munsif Court, Trichy.



For Petitioners : Mr.S.I.Muthiah

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ORDER

This Civil Revision Petition has been filed by the petitioners to set aside the fair and decreetal order passed by the I Additional District Munsif Court, Trichy, in I.A.No.5 of 2022 in O.S.No.716 of 1998, dated 31.01.2023.

2.By the impugned order dated 31.01.2023, in I.A.No.5 of 2022 in O.S.No. 716 of 1998, the I Additional District Munsif Court, Trichy, has rejected the application filed by the petitioner with the following observations:

"28.The law relating to appointment of a second commissioner or re-issue of warrant to the same commissioner to revisit or remeasure the suit property is well settled. It can be done only when the court reaches a conclusion that the report that is on record has to be scrapped for good and valid reason. In the present case the earlier report is not scrapped and the petitioners/plaintiffs side also not established the commissioner's report and plan, which is on record, is totally wrong or that the commissioner has not properly measured as per the warrant. In these circumstances, the court cannot reach a conclusion that the Advocate Commissioner report is to be scrapped. Unless the court reaches such conclusion after evidence is recorded, the application for third commissioner or reissue the commissioner cannot be entertained.

29.On considering the above detailed discussion, this court comes to conclusion that, the present petition filed by the petitioners under Order XXVI Rule 9 of CPC, after nearly 24 years from filing the main suit to reissue the Advocate Commissioner Warrant to inspect the suit properties and to measure the suit property with the help of qualified Surveyor and file his report and plan, with different views, such a in one hand, the suit property is



measured and another hand, the suit property is not measured properly, on the third hand, the suit property is not at all measured and file the present petition, without perused the earlier Advocate Commissioners reports and plans(Ex.C1 to Ex.C5), as deposed by PW2 in his cross examination in connection to suit property and lastly without establishing the above said Commissioner report is wrong with an appropriate documents. In these circumstances, this court finds that there is no merits in the present petition, as such the said petition is liable to be dismissed. On considering the nature of the suit and relationship between the parties there is no order with respect to costs."

3.The petitioners are the plaintiffs before the I Additional District Munsif Court, Trichy, in O.S.No.716 of 1998. The suit was filed by the petitioners for a permanent injunction to restrain the respondents herein from interfering with the peaceful possession of the property by the respondents on the western extremity described as 'B' schedule property in the plaint and for a mandatory injunction for the removal of the offending construction that has been allegedly put up by the respondents in the suit schedule property and for a declaration that the 'B' schedule property is part of 'A' schedule property.

4.Earlier, an Advocate Commissioner was appointed in I.A.No.102 of 1998. A report was also given by the Advocate Commissioner. Later, it was scrapped. Pursuant to which, a fresh order came to be passed by the Court in I.A.No.3 of 2020. The Court appointed an Advocate Commissioner for the second time. The Advocate Commissioner appointed by the Court executed the warrant and inspected the property on 13.03.2021 and gave a report dated 21.12.2021.



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5.It is submitted that while inspecting the property, the Advocate Commissioner has committed an error by giving a report in respect of the property in T.S.No.9 (formerly T.S.No.2337/3). According to the petitioners, the petitioners are in T.S.No.10/1 (formerly T.S.No.2337/4) measuring on an extent of 74 cents of land.

6.It is submitted that the Advocate Commissioner should have inspected the property in T.S.No.10/1 (formerly T.S.No.2337/4) and given a report. A reference is made to the following paragraphs from the report of the Advocate Commissioner filed in I.A.No.3 of 2020, which reads as under:-

"மேற்படி மனு சொத்துக்களை அளந்து தெரிவு செய்யப்பட்டதன் பேரில் சம்மந்தப்பட்ட சர்வேயர் கடந்த 17.03.2021ம் தேதி அறிக்கையின்படி திருச்சிராப்பள்ளி கிழக்கு வட்டம், செங்குளம் கிராமம், வார்டு 8, பிளாக் 25, T.S. 2337/4ல் உள்ள நிலத்தினை பொறுத்து மாவட்ட உரிமையியல் நீதிமன்றத்தில் வழக்கு நிறுவையில் உள்ளது தொடர்பாக மேற்படி இடத்தை அளந்து அத்துக்களை நீதிமன்ற ஆணையர் வர இருப்பதால் அவருக்கு மேற்படி நிலத்தின் நான்கு எல்லைகளை அளந்து காண்பிக்க நீதிமன்றத்தால் எனக்கு உத்தரவிடப்பட்டுருந்தன மீது மேற்படி இடத்திற்கு நகர அளவை கணக்குகளுடன் சென்று ஆவணங்கள் சரிபார்த்ததில் மேற்படி இடம் தற்போது நகர அளவை வார்டு W, பிளாக் 41 T.S.No. 10/1 என இருப்பது தெரிந்தது. மேற்படி இடத்தை நாளவை வரைபடத்தில் உள்ள நீள அகலத்தின் படி அளந்ததில் பூமியில் வரைபடத்தில் ஊதா மையினால் காண்பிக்கப்பட்ட 1, 2 ஆகிய அத்துக்கற்கள் தற்பொழுது பூமியில் இல்லாமல் காம்ப்வுண்ட் சுவராகவும், சிமெண்ட் தரையாகவும் இருந்தது. ஆனால் வரைபடத்தில் உள்ள படி பூமி அமைப்பு வளைவாக காம்ப்வுண்ட் இருந்தது. 1ல் இருந்து 2ல் உள்ள அத்துக்கும் இடையே வரை படத்தின் படி 46.0 மீ பூமியில் சரியாக உள்ளது."

7.It is submitted that the Advocate Commissioner was also not expected to give a report as to whether there was encroachment or not. The Advocate Commissioner was required to merely give a report about the physical features of the property.



8.It is therefore submitted that the petitioners were constrained to file I.A.No.5 of 2022 to appoint an advocate commissioner for the third time which has been rejected by the Trial Court.

9.I have considered the arguments advanced by the learned counsel for the petitioners.

10.The argument that the Advocate Commissioner has not inspected the property cannot be countenanced, as the report of the Advocate Commissioner, which has been extracted above, clearly indicates that he has inspected the property in T.S.No.10/1 [Old T.S.No.2337/4], Chenkulam Village, Trichy District.

11.That apart, the suit has been filed for permanent and mandatory injunction and for declaration. An Advocate Commissioner can be appointed only to inspect the property and to give a report on the physical features of the property.

12.In this case, the suit itself has been filed for permanent and mandatory injunction and for declaration and therefore, the attempt of the petitioners is only to collect evidence through the Advocate Commissioner.



13.This is the third attempt by the petitioners to appoint an Advocate Commissioner once again to inspect the property and to give a report after the Advocate Commissioner gave a report dated 21.12.2021 earlier. Therefore the present civil revision petition is liable to be dismissed.

14.There is no scope for appointing an Advocate Commissioner in a suit filed by the petitioners for permanent and mandatory injunction and for declaration. The petitioners having invited a report from the Advocate Commissioner, cannot ask for indirect scrapping of the same by substituting with a fresh report by an Advocate Commissioner once again.

15.Further, it is noticed that the suit is of the year 1998 and the same has been prolonged for over 2 ½ decades. Intention of the petitioners appears to prolong the longevity of the litigation endlessly. Therefore, I do not find any reason to interfere with the impugned order dated 31.01.2023, passed in I.A.No.5 of 2022 in O.S.No. 716 of 1998, on the file of the I Additional District Munsif Court, Trichy.

16.It is however open for the petitioners either to rely on the earlier report of the Advocate Commissioner or subject the Advocate Commissioner for cross-examination and thereby, discredit the report dated 21.12.2021 that was given pursuant to the order passed in I.A.No.3 of 2020.



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17.The learned I Additional District Munsif, Trichy, is directed to dispose O.S.No.716 of 1998 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

18.The present Civil Revision Petition is dismissed with the above observations. Accordingly, it is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.06.2023

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

The I Additional District Munsif Court,
Trichy.



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C.SARAVANAN,J.

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Pre-Delivery order made in
C.R.P(MD).No.1013 of 2023
and
CMP(MD)No.4762 of 2023

08.06.2023