



C.R.P(MD)No.896 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.896 of 2023

and

C.M.P(MD) No.4124 of 2023

1.Devaasirvatham

2.Suganthi

...Petitioners/ Petitioners/
Defendants

Vs.

Vethamuthu

...Respondent/ Respondent
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 14.10.2022 made in I.A.No: 182 of 2022 in O.S.No. 43 of 2016 on the file of the District Munsif Court Paramakudi.

For Petitioners : Mr.D.Senthil

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order, dated 14.10.2022 made in I.A.No: 182 of 2022 in O.S.No. 43 of 2016 on the file of the District Munsif Court Paramakudi.



C.R.P(MD)No.896 of 2023

WEB COPY

2. The petitioners are the defendants in O.S.No.43 of 2016 filed by the respondent before the District Munsif Court, Paramakudi. The said suit was allowed by the Trial Court earlier by its judgment and decree, dated 25.11.2018. The relevant portion of the judgment and decree reads as under:

"1. இந்த வழக்கு பகுதியாக கீழ்க்கண்டவாறு அனுமதிக்கப்படுகிறது.

2. நீ.ம.சா.ஆ.3ல், X, X1, X2, X3, X4, F, C, D என மனை எண்.13ல் குறிப்பிட்டு காட்டியுள்ள பகுதி வாதிக்கு பாத்தியமானது என விளம்புகை செய்தும், மேற்படி சொத்து பொறுத்து வாதியின் அனுபவத்தில் தடையிடைஞ்சல் செய்யக் கூடாது என பிரதிவாதிகளுக்கு எதிராக நிரந்தர உறுத்துக்கட்டளை பிறப்பித்தும் தீர்ப்பளிக்கப்படுகிறது.

3. நீ.ம.சா.ஆ.3ல், E, X, X1, X2, X3, X4 என மனை எண். 13ல் குறிப்பிட்டு காட்டியுள்ள பகுதி பொறுத்து வழக்கு தள்ளுபடி செய்யப்படுகிறது.

4. வாதி கோரியுள்ள செயலுறுத்துக்கட்டளை பரிகாரம் பொறுத்து வழக்கு தள்ளுபடி செய்யப்படுகிறது.

5. நீ.மா.சா.ஆ.3 தீர்ப்பாணையின் ஓர் அங்கமானதாகும்.

6. தரப்பினர்கள் அவரவர்கள் செலவுத் தொகையை அவரவர்களே ஏற்றுக்கொள்ள உத்தரவிடப்படுகிறது."

3. Aggrieved by the same, A.S.No.33 of 2019 was filed before the Sub Court, Paramakudi. The case was remitted back with certain direction. After the case was remitted back, the petitioner herein filed I.A.No.182 of 2022 under Order 6 Rule 9 of C.P.C to appoint an Advocate Commissioner. The relevant portion of the impugned order rejecting the request of the petitioner for appointing an Advocate



C.R.P(MD)No.896 of 2023

Commissioner under Order 26 Rule 9 of C.P.C. reads as under:

WEB COPY

"5. Point for consideration:-

Whether earlier advocate to be appointed as commissioner to inspect the suit property and note down physical features with the aid of FMB as prayed for the petitioners?

a. It is the case of petitioner that writers Inspecting the suit property with FMB measurements this suit cannot be decided. Hence, to note down present physical feature and adjacent lands with surveyor advocate commissioner in be appointed.

b. The case of the respondent, who is plaintiff in the suit, is that in order to drag on the suit this petition is filed and already advocate commissioner report in detail has been filed and that also not objected by the petitioners. In the AS No 33/2019 there is no direction to obtain new advocate commissioner report.

C. Considering petition and counter averments and submissions of both side, this court finds that the main suit is remanded back for fresh trial in respect of portion mentioned as X,X1,X2,X3,X4 in EFCD in earlier advocate commissioner report after amending plaint for mandatory injunction. The first appellant court remanded the suit based upon earlier commissioner report. It is seen that the petitioner did not raise any objection as stated in this petition before trial or first appellant court. Now the petitioner cannot ask for new plea for appointing advocate commissioner to measure the property with FMB measurements.

d. The prayer of appointing earlier advocate commissioner, for the reasons stated in the petition, is first time raised in this case that too after first appellant court remanded the suit. Further in the first appeal judgment no remark of mistake or incomplete in earlier advocate commissioner report and plan are mentioned. The reason stated by the petitioner for appointing Commissioner is not satisfactory.

6. In the result, for the above said reasons, this petition is dismissed. No costs."



C.R.P(MD)No.896 of 2023

WEB COPY

4. The present Civil Revision Petition has been filed challenging the same.

5. It is submitted that the Commissioner was appointed and the petitioner had also given a report at the original stage before the suit was disposed of earlier by its judgment and decree, dated 25.11.2018. It is submitted that the petitioner had also filed his objections and the trial Court had partly allowed and partly rejected the claim of the respondent. It is submitted that in view of the dispute between the parties, it was just a necessary that Advocate Commissioner was required to be appointed.

6. I perused the impugned order and perused the judgment and decree of the trial Court and that of the appeal remanding the case based on the Advocate Commissioner report.

7. In my view, there is no merit in the civil revision petition. It is open for the petitioner to question the creditability of the Advocate Commissioner's report which was given earlier.



C.R.P(MD)No.896 of 2023

WEB COPY

8. Therefore, the present Civil Revision Petition stands dismissed by directing the District Munsif Court, Paramakudi to dispose of the suit pursuant to the remanding order as expeditiously as possible preferably within a period of 9 months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

31.03.2023

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

sn

To

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



WEB COPY



C.R.P(MD)No.896 of 2023

C.SARAVANAN,J.

SN

C.R.P(MD)No.896 of 2023

31.03.2023