



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE P. DEVADASS

CRP(MD).No.1631 of 2015 and  
M.P(MD).No.1 of 2015

Mannarkoil Panchayat  
through its president

: Petitioner

Vs.

Ramaiah

: Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.193 of 2015 in O.S.No.26 of 2011 on the file of Additional District Munsif Court, Ambasamudram, dated 07.03.2015.

For Petitioner : Mr.S. Meenakshi Sundaram  
For Respondent : Mr. V. George Raja

### O R D E R

As against striking of the defendant's I.A.No.193 of 2015 in O.S.No.26 of 2011 filed to strike off the Advocate / Commissioner's report, this revision has been directed by the defendant.

2. Plaintiff filed the suit in O.S.No.26 of 2011, for bare injunction. The question involved in this suit is as to a suit item 1 and 2 described in the suit schedule. It was disputed by the Mannarkoil Panchayat / defendant.

3. In the suit, on the application of the plaintiff, Mrs. B. Ambika, Advocate / Commissioner. The learned Advocate / Commissioner inspected the suit property and also filed her report.

4. In the circumstances, the plaintiff took out I.A.No.193 of 2015 to scrape the report of the Advocate / Commissioner raising certain contentions. This was dismissed by the trial Court, on the ground that the Interlocutory Application is filed only when the suit is posted in the Special list and it is a belated exercise, no memo has been filed re-issue of Commissioner, to inspect the property with the help of Taluk Surveyour.

5. Thus this revision.

6. According to the learned counsel for the petitioner / defendant, would submit that merely because that the party has failed to file a written objection, it cannot be said that report can be accepted blindly, when especially there are some infirmities in the Commissioner's report. Further, due to some reasons at the time of Commission, the defendant could not be present. In the circumstances, the Commissioner's report ought to have been rejected and the warrant should

have been re-issued to note down the physical features with the help of the Taluk Surveyor.

7. On the other hand, the learned counsel for the respondent / plaintiff would submit that, if the petitioner wanted to re-issue the Commissioner's warrant with certain directions, he should have filed a memo for instructions. But, he did not do so. Further, the Commissioner's report containing the existing situation cannot be disturbed. Further, there were some demolitions in a portion of the building by the defendant. Even if the Commissioner's warrant is re-issued, real picture will not be available, except the demolished physical features. Actually, petitioner is a Rip Van winkle raised for a long slumber. Now, only opened his eyes. He is not entitled to indulgence of the court. There will be an end for all disputes and litigations.

8. I have anxiously considered the rival submission perused the materials on record and the impugned order.

9. There is no point in keeping the matter pending over long years. Litigation should be brought to an end. But, it should be in a realistic and pragmatic manner.

10. Now, in this case, as rightly pointed out by the learned counsel for the respondent that the defendant Municipality had slept over the matter for some time but, for that alone it should not be penalized.

11. When the Advocate / Commissioner's report will be of assist once the trial Court to resolve the issue it can be used of. The matter is controversy cannot be brought to the notice of the Court by any amount of oral evidence. For personal reason the Advocate / Commissioner is now not available. There are many lawyers available to do good work including Advocate / Commission work. This arrangement will give benefit to both sides and also will enable the trial Court to come to a correct conclusion and solve this litigation.

12. In the circumstances, ordered as under:-

(I) The order of the learned Additional District Munsif, Ambasamudram, passed in I.A.No.193 of 2015 in O.S.No.26 of 2011, dated 07.03.2015, is set aside.

(ii) The Trial Court will appoint a fresh Advocate / Commissioner to inspect the physical features of the property described in the suit schedule with the help of Taluk Surveyor.

(iii) Both sides shall be permitted to give written memo of instructions to the Advocate / Commissioner.

(iv) The Advocate / Commissioner will visit suit property by after due notice to both sides.

(v) The Advocate / Commissioner will file his report together with plaint, if any to the trial Court.

(vi) The Trial Court will give opportunity to both sides to file their objections, if any to the commissioner's report.

(vii) The petitioner / defendant shall be given 15 days time from the date of receipt of this order to file his written objections to the earlier Commissioner's report.

(viii) The earlier Commissioner's Report shall also form part of record.



(ix) The Advocate / Commissioner's remuneration shall be paid by the petitioner / defendant.

13. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

/True copy/

Sd/-  
Assistant Registrar(Crl.side)

Sub Assistant Registrar

To

1. The Additional District Munsif, Ambasamudiram.

+one cc to Mr.A.Arumugam, Advocate in SR.No.44967

+one cc to Mr.S.Meenakshi sundaram, Advocate in SR.No.44672

CRP (MD) .No.1631 of 2015 and  
M.P (MD) .No.1 of 2015

06.08.2015

Cs1/NGS-SS/SAR-II/24.08.2015  
3P/4C