



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2018

CORAM:

WEB COPY

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

**C.R.P. (MD) .No.1395 of 2016**

**and**

**C.M.P. (MD) .No.6794 of 2016**

N.Prithiviraj ... Petitioner/3<sup>rd</sup> Plaintiff

-vs-

1.K.Surilli Bommu

2.K.S.Elanchelvan ... Respondents 1 & 2/Defendants

3.Jeeva .... 3<sup>rd</sup> Respondent/3<sup>rd</sup> Defendant

N.Suriliammal (died)

S.P.Narayanasamy (died)

Prayer: Civil Revision Petition under Article 227 of the Constitution of India as against the order dated 01.06.2016 passed in I.A.No.190 of 2016 in O.S.No.99 of 2004 on the file of the District Munsif Cum Judicial Magistrate, Bodinayakanur.

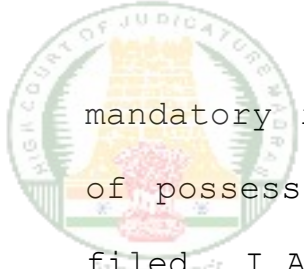
For Petitioners : Mrs.P.Jessi Jeeva Priya

For Respondents :Mr.S.Kadarkarai for R-1 & R-2

R-3- Tapal due

**ORDER**

The plaintiff is the revision petitioner herein. His parents filed a suit wayback in the year 1999 and the same was transferred to the file of the District Munsif Court, Bodinayakanur and  
<https://hcservices.ecourts.gov.in/hcservices/>  
renumbered as O.S.No.99 of 2004. It was originally a suit for



mandatory injunction and subsequently, amended to one for recovery of possession. In the said suit, the revision petitioner herein filed I.A.No.190 of 2016 for reissuance of the Advocate Commissioner's warrant. The said I.A was dismissed by an order dated 01.06.2016 and the same is challenged in this Civil Revision Petition.

2.Heard the learned counsel appearing on either side.

3.The learned counsel appearing for the revision petitioner submits that in the year 1999, an application for amendment of plaint was filed and the same was dismissed. The order dismissing the application for amendment of plaint was challenged by the revision petitioner before this Court by filing C.R.P.(MD).Nos.2016 and 2017 of 2009. The said CRPs were allowed only on 16.04.2015. In view of the amendment made to the plaint, now, there is a necessity for reissuance of the Advocate Commissioner's warrant. She further submitted that on account of the pendency of the Civil Revision Petition before this Court, the plaintiff could not file the present application earlier.

4.This Court is unable to agree with the submissions of the learned counsel appearing for the revision petitioner.

5.As rightly pointed out by the learned counsel for the respondent as well as the Court below, the suit is of the year 1999. An Advocate Commissioner was appointed even in the year 1999 and a



report also was submitted immediately. The said Advocate Commissioner was examined as P.W.3 by the plaintiff in the year

2007. Till date, no objection has been filed with regard to the Advocate Commissioner's report. The fact that the plaint has been amended and the additional prayers have been incorporated will not in any way strengthen the case for reissuance of the Advocate Commissioner's warrant. This court has allowed the revision petitioner's earlier C.R.P as early as on 16.04.15. But the present I.A came to be filed only in March 2016. Thus, there is enormous delay on the part of the plaintiff.

6.This Court, therefore, is of the view that the present I.A has been filed only to drag on the proceedings. That apart, as rightly observed by the court below, since there is no survey number in Ex.A.20, it is not possible to take the assistance of the surveyor for measuring the property in question. Taking note of the fact that the suit has been instituted wayback in the year 1999, this court is of the view that the matter cannot be kept pending by filing applications one after another.

5.As rightly pointed out by the learned counsel for the respondents, the Advocate Commissioner's report was not objected by the plaintiff, which was filed wayback in the year 1999.



6.The reasons set out by the court below are acceptable and sound. Finding no merits, this Court dismisses this Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd  
Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar

To

The District Munsif Cum Judicial Magistrate,  
Bodinayakanur.

**C.R.P. (MD) .No.1395 of 2016**

NM/SKN/SAR 3/12.09.18/4P/2C