



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2018

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THE HONOURABLE MR. JUSTICE **G.R.SWAMINATHAN**

C.R.P(MD) (PD) .Nos.1651 and 1652 of 2018

and

C.M.P(MD) .No.7212 of 2018

Thavasimani

... Petitioner/Petitioner/Petitioner
Plaintiff (in both petitions)

vs.

1.P.Ahamed
2.Sabika Banu
3.Velammal

...Respondents/Respondents/Respondents
Defendants (in both petitions)

COMMON PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the order dated 04.07.2018 made in I.A.No.738 and 739 of 2017 in I.A.No.633 of 2013 in O.S.No.69 of 2012 on the file of the District Munsif Court, Ramanathapuram and allow these civil revision petitions.

For Petitioner : Mr.K.Mahendran(in Both Petitions)
For R2 & R3 : Mr.V.Sitharanjandas
(in both petitions)

COMMON ORDER

The plaintiff in O.S.No.69 of 2012 on the file of the District Munsif Court, Ramanathapuram, is the petitioner in these civil revision petitions. The suit was filed for the relief of declaration and permanent injunction. In the said suit, the plaintiff wanted an Advocate Commissioner to be appointed to measure the suit property. The Court below appointed an Advocate Commissioner, who filed a report on 21.10.2016. Since the plaintiff did not file his objection within time, the interlocutory application was closed. Thereafter, the revision petitioner filed I.A.No.55 of 2017 for reception of his objection. The said interlocutory application was allowed.



2. Thereafter, when the matter was listed for trial, the plaintiff took out two interlocutory applications. One for re-opening the earlier interlocutory application and the other was for re-issuance of the warrant to the Advocate Commissioner. Both interlocutory applications were dismissed by the Court below on the footing that the plaintiff was unnecessarily trying to drag on the proceedings and that he did not make a request even at the time of filing I.A.No.55 of 2017. In this view of the matter, both the interlocutory applications suffered dismissal. Questioning the same, these two civil revision petitions have been filed.

2. Heard the learned counsel for the petitioner and the learned counsel for the contesting respondents.

3. As rightly pointed out by the learned counsel appearing for the revision petitioner, the final paragraph of the objection filed by the plaintiff in response to the Commissioner's report clearly states that the objection should be received and the Commissioner should be directed to file an additional report along with plan. Though such a request was made even earlier by the plaintiff herein, the Court below has erroneously gone on the premise that the revision petitioner is seeking re-issuance of warrant only after the matter was listed for trial. Since the Court below has proceeded on this erroneous premise, the orders impugned in these civil revision petitions are liable to be set aside. Order 26 Rule 10 (3) states that where Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit. Therefore, while setting aside the orders impugned in these civil revision petitions, the matter is remitted to the file of the Court below to consider afresh the request of the revision petitioner for re-issuance of the warrant. In other words, the earlier interlocutory application stands reopened and the Court below shall take a decision with regard to re-issuance of warrant.

4. These Civil Revision Petitions are allowed, accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS-III)



1.The District Munsif Court, Ramanathapuram.

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+1 CC To MR.V.SITHARANJANDAS, Advocate SR. NO.88520

+1 CC To MR.K.MAHENDRAN, Advocate SR. NO. 88677

C.R.P(MD) (PD) .Nos.1651 and 1652 of 2018
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RMK

TR/SKN/SAR-III (12.11.2018) 3P 4C