



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.1921 of 2012 (PD)

and

M.P. (MD) .No.1 of 2012

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M.Nelson Babu ... Petitioner / 2nd Respondent / 2nd Defendant

Vs.

1.K.Kamalesh Babu

2. K.Vijayakumar

Respondents 1 and 2 represented by
their Power Agent Shylaja

... Respondents 1 & 2 /
Petitioners / Plaintiffs

3. Sagini ... 3rd Respondent/2nd Respondent/1st Defendant

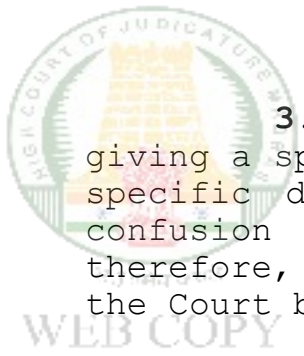
PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 30.07.2012 made in I.A.No.876 of 2011 in O.S.No.99 of 2008, on the file of the Principal District Munsif Court, Nagercoil.

For Petitioner : Mr.A.Arumugam
For Respondents : Mr.N.Dilipkumar

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below scrapping / rejecting the report of the Advocate Commissioner and appointing a new Commissioner to inspect the property and to file a report in accordance with the directions given in the warrant issued by the Court below.

2. The petitioner is the second defendant in the suit. The respondents 1 and 2 / plaintiffs filed a suit seeking for the relief of declaration and injunction. During the pendency of the suit, the plaintiffs filed an application for appointment of a Commissioner to visit the property and to submit his report. The Court below appointed a Commissioner and gave clear guidelines with regard to the scope of inspection. However, the Commissioner is said to have acted beyond the scope of the warrant resulting in the plaintiffs filing an application for scrapping the report and to appoint another Advocate Commissioner to inspect the property.



3. This application was allowed by the Court below after giving a specific finding that the Commissioner had acted beyond the specific directions given by the Court and he had created more confusion by dividing the property into seven schedules and therefore, a report of the Commissioner will not be of any use of the Court below in deciding the issue.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 and 2.

5. Taking into consideration the facts and circumstances of the case and the reasoning given by the Court below, this Court does not find any illegality or infirmity in the order passed by the Court below. This Court does not find any ground to interfere with the fair and final order passed by the Court below.

6. It is also brought to the notice of this Court that pursuant to the orders passed by the Court below, another Advocate Commissioner has already been appointed and since there is an order of stay, he is not able to inspect the property.

7. In the result, the fair and final order passed by the Court below is hereby sustained and the Court below is directed to immediately direct the Advocate Commissioner to carry on with the inspection of property in accordance with the warrant issued to him. The Court below shall dispose of the proceedings in O.S.No.99 of 2008, within a period of four months from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1.The Principal District Munsif Court, Nagercoil.

2.The Record Keeper, VR Section
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-102498[F] dated
29/11/2019)

<https://hcservices.ecourts.gov.in/hcservices/>



CRP.(MD).No.1921 of 2012(PD)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-102929[F] dated
02/12/2019)

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MK (17.12.2019) 3P 6C

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