



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
RESERVED ON : 15.11.2019  
DELIVERED ON : 26.11.2019  
CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.R.P.(PD)(MD)No.1681 of 2014

and

M.P.(MD)No.1 of 2014

WEB COPY

1.Johnrose  
2.Stanislaus  
3.Savariyar Pichai

.. Petitioners /Petitioners /Defendants  
Vs.

Mary Nimilda

.. Respondent/ Respondent/Plaintiff

**Prayer :** This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.44 of 2014 in O.S.No.77 of 2011 dated 12.06.2014 on the file of the learned Additional District Munsif, Eraniel.

For Petitioners : Mr.R.Manimaran  
For Respondent : Mr.R.Russel Raj

**ORDER**

Heard the learned counsel on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.44 of 2014 in O.S.No.77 of 2011 dated 12.06.2014 on the file of the learned Additional District Munsif, Eraniel.

3.The petitioners herein are the defendants and the respondent herein is the petitioner in the suit. The respondent herein has filed a suit in O.S.No.77 of 2011 for a prayer of a mandatory injunction to remove the compound wall and for a permanent injunction. In that suit, an Advocate Commissioner was appointed and the Advocate Commissioner visited the property and submit a report and plan. The petitioners herein filed a petition in I.A.No.44 of 2014 to scrape the Commissioner's report and plan.

4.The brief facts in I.A.No.44 of 2014 reads as follows:

The Commissioner visited the property on 01.04.2011, without giving notice to the defendants and the property was not identified by the defendants. The four boundaries for survey No.190/05,14 and 17 and the new survey no.180/9 were not identified by the Commissioner and the Commissioner failed to mention the Tsunami residence. Hence, the Commissioner report is not proper. The description of the suit property is wrong and the Commissioner report and plan are to be scraped.



5.The brief substance of the counter is as follows:

The interim report filed by the Commissioner is correct. Only after giving notice, the Commissioner visited the property. On the basis of the records, the Commissioner has identified the property in survey no.180/2, 14 and 17. Only after the perusal of the documents pertaining to survey No.180/9 with the help of the Surveyor, the Commissioner has filed the report and plan. There is no necessity to scrape the Commissioner report and plan.

6.The trial Court after considering both sides, dismissed the petition. Against which, the defendants/revision petitioners herein preferred this revision petition.

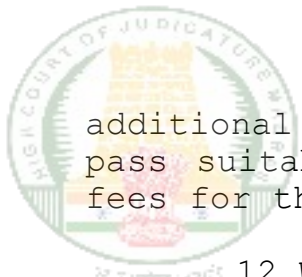
7.On the side of the revision petitioners, it is stated that the trial Court failed to note that the Commissioner has sent a telegram at 12.45 p.m., on 01.04.2013, but, the telegram was served upon the petitioner on 05.04.2013. The trial Court failed to consider Ex.B1, the cover of the telegraphic Department, which will prove the delivery of telegram on 05.04.2013. The Commissioner has measured the property and the Commissioner has admitted in his evidence that he has not annexed the new survey plan. The trial Court failed to consider the contradictions in the evidence of the Commissioner regarding the non existence of Tsunami house in survey No.180/9. The Commissioner has failed to note down the width of the road in the Tsunami colony.

8.On the side of the respondent, it is stated that the respondent has already filed a petition for the same prayer and the petition was dismissed and the dismissal order was not challenged. Thereafter, the petitioner has filed this petition and that this revision petition has to be dismissed on the same ground.

9.On the side of the respondent, it is further stated that after the completion of three years, there may be changes in the physical features and it would not be proper for appointment of another Advocate Commissioner.

10.From the records, it is seen that the Commissioner visited the property on 01.04.2011 and he issued the notice through telegram at 12.45 hours on 01.04.2011. It is seen that the Commissioner has visited the property in the absence of the revision petitioners. It is also seen that the the respondent did not file any document to show that a similar petition was already filed before the trial Court.

11.Taking into consideration, the present situation, instead of scraping, the earlier Commissioner report, it would be proper for the same Commissioner to re-visit the property in the presence of the petitioner and to note down the physical features and to file an



additional report and plan. Hence, the trial Court is directed to pass suitable orders for the re-visit of the Commissioner and the fees for the Commissioner is to be paid by the revision petitioners.

12. With the above observation, this Civil Revision Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

Mrn

To

The Additional District Munsif, Eraniel.

+1 CC to Mr.R. MANIMARAN, Advocate ( SR-102052[F] dated 28/11/2019 )

+1 CC to Mr.R. RUSSELRAJ, Advocate ( SR-102113[F] dated 28/11/2019 )

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**26.11.2019**

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