

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/3/2020

C O R A M

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition No.1198 of 2020

Amaravathi

...

Petitioner

Vs

1. Pandiyan

2. Selvam

3. Balakrishnan

...

Respondents

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 10/9/2019 made in I.A.No.1981 of 2015 in O.S.No.66 of 2012 on the file of the Principal District Munsif Court, Kallakurichi, Villupuram District.

For petitioner

...

Mr.T.Anbu Kumar

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ORDER

Civil Revision Petition has been filed against the fair and decretal order dated 10/9/2019 made in I.A.No.1981 of 2015 in O.S.No.66 of 2012 on the file of the Principal District Munsif Court, Kallakuruchi, Villupuram District.

2. Facts in brief are as follows:-

(i). Revision Petitioner had filed a suit in O.S.No.66 of 2012, on the file of the Principal District Munsif, Villupuram District. First respondent, had filed an application in I.A.No.1048 of 2012, to appoint an Advocate Commissioner, to inspect and measure the suit property, with the help of Surveyor and file a report before the trial Court. After issuing notice to all the parties, Advocate Commissioner inspected the suit property and submitted a report on 12/1/2015.

(ii). On 11/8/2015, the petitioner had filed an objection, by stating that without the assistance of the Surveyor, Advocate Commissioner had measured the suit property and filed a biased report

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therefore, the trial Court to appoint the same Advocate Commissioner, directing him to submit the report by measuring the property with the assistance of Surveyor. But the trial Court, did not consider the same. Therefore, the petitioner had filed an application before the trial Court in I.A.No.1981 of 2015 seeking the relief to appoint the same Advocate Commissioner to measure the suit mentioned property with the assistance of the Surveyor, but the same was dismissed on 10/9/2019. Aggrieved against the same, the revision petitioner has come forward with the instant Civil Revision Petition.

3. Heard the learned counsel for the revision petitioner.

4. Learned counsel appearing for the revision petitioner would submit that the Advocate Commissioner have not got the assistance of the Surveyor to measure the suit property, as ordered in I.A.No.1048 of 2012. He would further submit that no prejudice would be caused to any of the parties in the suit if the suit property was measured by the same Advocate Commissioner.

5. In ***VEPPANATHAR @ KARUPPANNAN AND ANOTHER Vs. KALIAPPAN (2000) 1 L.W – 893***, a learned Single Judge of this Court, held that under Order 26, Rule 10, Sub-rule (3), the Court, if it is dissatisfied with the report, can direct such further enquiry also which means even without setting aside the report, the Court can direct the commissioner to rectify the defect or deficiency, taking into consideration the objections and evidence let in in that behalf and to file a supplementary report. As far as possible, Commissioner, who has already visited the property should be directed to file a supplementary report and only if that is not possible, the report could be scrapped.

6. In ***K.VISWANATHAN Vs. D.SHANMUGHAM MUDALIAR AND ANOTHER (1986) 1 MLJ – 319***, the Hon'ble Court has held as under:-

“The effect of scrapping the report is that the report which is evidence in the case and part of the record ceases to be so and cannot be referred to by the

parties. The mere fact that the Commissioner has failed to note certain features which according to the defendant were important does not mean that the whole report should be scrapped. Adequate provision to safeguard the interest of the parties concerned is made in sub-rule (3) of Order 26 Rule 10 of the Code of Civil Procedure.”

7. On the case on hand, the Advocate Commissioner had submitted his report on 12/1/2015, but the revision petitioner had filed the instant petition on 16/8/2015, after a period of eight months to re-issue of summons to the same Advocate Commissioner and to submit a report with the assistance of Surveyor. The prayer is unacceptable and the same is liable to be rejected for the reason that the earlier report of the Advocate Commissioner cannot be scrapped, unless there are allegations that the Advocate Commissioner has acted in a partial, bias or vindictive manner. In the absence of the such pleadings, the instant application seeking reissue of summons to the Advocate Commissioner cannot be entertained and the same is liable to be rejected.

8. In the result, **Civil Revision Petition is dismissed.** Learned counsel appearing for the revision petitioner has sought for a direction to the speedy disposal of the suit. Considering the fact that the suit is of the year 2012, this Court is inclined to direct the Principal District Munsif, Kallakurichi, to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

19/3/2020

Index : Yes/No

Internet: yes/No

Speaking/Non-speaking order
mvs.

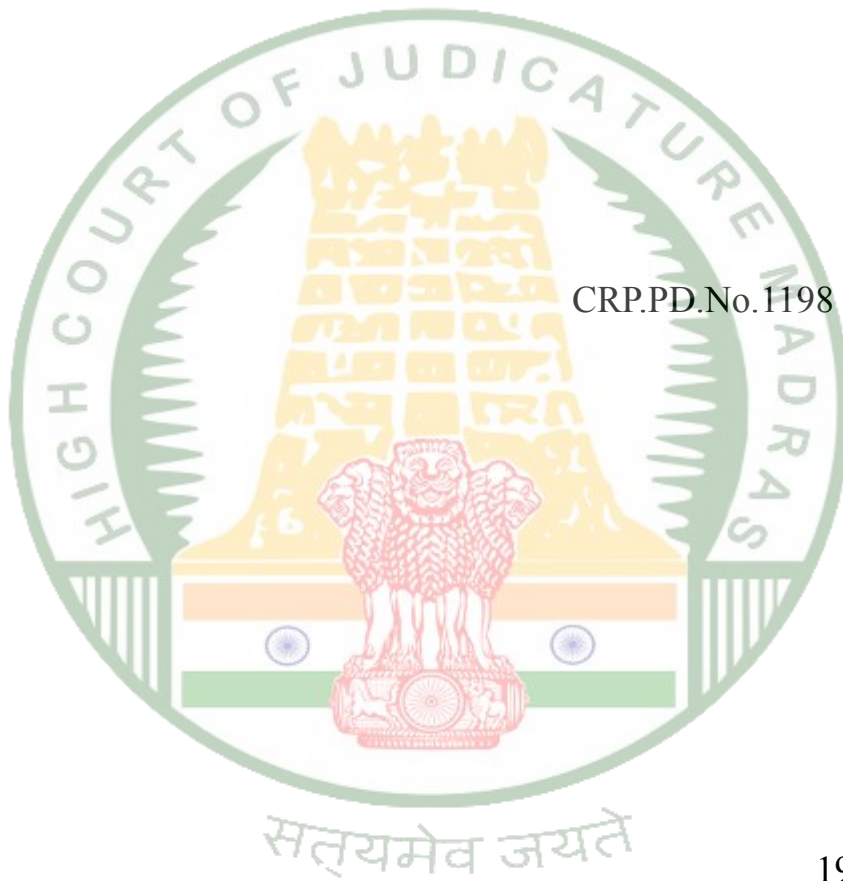
To
The Principal District Munsif Court,
Kallakurichi, Villupuram District.

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D.KRISHNAKUMAR,J

mvs.



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