



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (PD) (MD)Nos.2283 and 2762 of 2018
and
C.M.P. (MD)No.10250 of 2018

C.R.P. (PD) (MD)No.2283 of 2018

Rajammal : Petitioner/Petitioner/Petitioner/Defendant
.. Vs ..

S.Syamali : Respondent/Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow the Civil Revision Petition and set aside the order dated 01.08.2018 made in I.A.No.441 of 2018 in I.A.No.348 of 2013 in O.S.No.808 of 2012 on the file of the III Additional District Munsif Court, Trichy.

For Petitioner : Mr.PT.S.Narendravasan
For Respondent : Mr.S.Ramesh

C.R.P. (PD) (MD)No.2762 of 2018

S.Syamali : Petitioner/Petitioner/Plaintiff
.. Vs ..

S.Rajammal : Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 23.12.2017 in I.A.No.348 of 2013 in O.S.No.808 of 2012 on the file of III Additional District Munsif Court, Tiruchirappalli.

For Petitioner : Mr.S.Ramesh
For Respondent : Mr.PT.S.Narendravasan

- - - -



COMMON ORDER

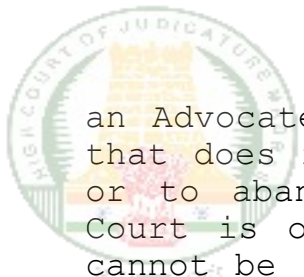
The Civil Revision Petition in C.R.P.(MD)No.2762 of 2018 is directed against the order passed in I.A.No.348 of 2013 in O.S.No.808 of 2012 on the file of III Additional District Munsif, Tiruchirappalli. C.R.P.(MD) No.2283 of 2018 is filed challenging the order dated 01.08.2018 in I.A.No.448 of 2018 in I.A.No.348 of 2013 in O.S.No.808 of 2012.

2.The brief facts that are necessary for the disposal of both the Civil Revision Petitions are as follows:

2.1.The revision petitioner is the plaintiff in the suit in O.S.No.808 of 2012. The suit in O.S.No.808 of 2012 was filed by the revision petitioner for permanent injunction against the respondent restraining her and her men from interfering with the petitioner's peaceful possession and enjoyment of the suit property as pathway and for mandatory injunction directing the respondent herein to remove the pipeline laid underground and for mandatory injunction directing the respondent to remove another pipeline erected by the respondent to drain the rain water into a common pathway and for further reliefs. After filing the written statement, the revision petitioner filed a petition in I.A.No.898 of 2012 for appointment of an Advocate Commissioner. The said application was allowed and a Commissioner was appointed. After the Commissioner filed the report, the respondent in this Civil Revision Petition filed a petition in I.A.No.348 of 2013 to abandon the Commissioner's report and appoint a new Advocate Commissioner to inspect the suit property and note down the physical features and to draw a plan and submit a report afresh.

2.2.The said petition was opposed by the revision petitioner. Without deciding the question as to whether the first Commissioner's report is liable to be scrapped or not and without considering the material objections raised by the defendant to the report of the Advocate Commissioner, the petition filed by the defendant in I.A.No.348 of 2013 was allowed, after recording the fact that the Counsel for the revision petitioner before the lower Court had stated that a new Advocate Commissioner can be appointed at the cost of the respondent who is the petitioner in I.A.No.348 of 2013. Aggrieved by the order allowing I.A.No.348 of 2013 in O.S.No.808 of 2012, the revision petitioner has preferred the above Civil Revision Petition.

3.It is to be noted that the lower Court has not considered the objections raised by the respondent to the Commissioner's report. The Court did not consider the issue how the first Commissioner's report can be ignored by the Court. The objections to the Commissioner's report have not been discussed in the order. Merely because the revision petitioner has no objection for appointment of



an Advocate Commissioner at the cost and expenses of the defendant that does not mean that she has consented for scrapping the report or to abandon the earlier report. In these circumstances, this Court is of the view that the order passed in I.A.No.348 of 2013 cannot be sustained. The legal position is settled that the Court cannot venture to appoint a second Commissioner unless the Court finds sufficient reason to scrap the first report. In the present case, the revision petitioner has filed a counter in I.A.No.348 of 2013 stating that certain omissions pointed out by the respondent can be rectified by re-issuing the warrant to the same Commissioner and that the second Commissioner is not necessary. Therefore, the Court can re-issue the warrant to the same Commissioner to file an additional report to note down certain features which are not noted by the Commissioner during his first visit. Hence, this Court is inclined to pass the following order:

The order passed in I.A.No.348 of 2013 in O.S.No.808 of 2012 by the learned III Additional District Munsif, Tiruchirappalli, is set aside. The matter is remitted back to the learned III Additional District Munsif, Tiruchirappalli, to pass appropriate orders on merits and in accordance with law. Only if the respondent satisfies the Court that the earlier report of the Commissioner is liable to be scrapped for valid, lawful grounds, it is permissible for the lower Court to appoint a fresh Commissioner. In case, the Commissioner's report filed earlier is incomplete or the Commissioner has failed to note down any features, it is relevant to resolve any issue which arise between the parties, the lower Court may re-issue the warrant to the same Commissioner to get additional report.

4.With the above observations and directions, the Civil Revision Petition in C.R.P.(MD)No.2762 of 2018 is allowed and the learned III Additional District Munsif, Tiruchirappalli, is directed to dispose of the application in I.A.No.348 of 2013 within a period of twelve weeks from the date of receipt of a copy of this order.

5.In view of the order passed in C.R.P.(MD)No.2762 of 2018, the prayer in C.R.P.(MD)No.2283 of 2018 has become infructuous and accordingly, the same is dismissed as infructuous. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

The III Additional District Munsif Court,
Tiruchirappalli.

+2 CC to Mr.V. RAGHAVACHARI, Advocate (SR-13347,13348[F]dated
30/07/2020)

+1 CC to Mr.PT.S. NARENDRAVASAN, Advocate (SR-13381[F] dated
30/07/2020)

C.R.P (PD) (MD)Nos.2283 and 2762 of 2018

29.07.2020

VB (18.08.2020) 4P 5C