



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P.(PD)(MD)No.2240 of 2018

and

C.M.P.(MD)No.10089 of 2018

Paramasivam

...Revision Petitioner/Petitioner
/2nd defendant

vs.

1.Joint Family Represented by
B.Laksminarayanan,
S/o Bala Subramanian,
NO.1064/b/40, GRV Nagar North,
North Gandhigramam,
Karur.

...1st Respondent/1st Respondent /
Plaintiff

2.Radhika

... 2nd Respondent/2nd Respondent/
1st Defendant

PRAYER: This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order of the Additional District Munsif, Karur made in I.A.No.643 of 2018 in O.S.No.340 of 2014 on the file of the Additional District Munsif Court, Karur, Karur District.

For Petitioners : Mr.D.Balamurugapandi

For R1 : Mr.K.Suresh

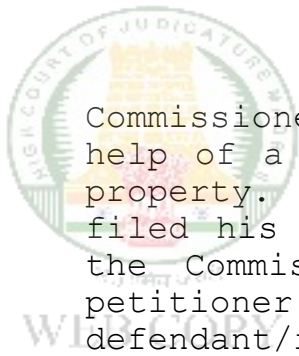
For R2 : No appearance

ORDER

The revision petitioner is the second defendant in O.S.No.340 of 2014.

2. The brief facts that led to the filing of this petition may be stated as follows:

The respondent herein has laid a suit in O.S.No.340 of 2014 on the file of the Additional District Munsif Court, Karur for bare injunction that his possession of the suit property should not be disturbed. In the said suit, the plaintiff/ respondent herein, has taken out an application in I.A.No.444 of 2015 for appointing a



Commissioner for local inspection to measure the property with the help of a Surveyor, and to note down the physical features of the property. The said Commissioner has visited the property and has filed his report. There appears to be certain adverse finding in the Commissioner's report against the interest of the revision petitioner in the suit property. Therefore, the second defendant/revision petitioner herein took out an application in I.A.643 of 2018 for examining the Commissioner and for impeaching the Commissioner's report. This was opposed to by the plaintiff. In his affidavit filed in support of the petition, the revision petitioner has essentially contended that the Commissioner has manipulated certain facts, which does not reconcile with the facts on lie. His objection was over ruled, and the trial Court dismissed the said application, which is now under challenge.

3. The learned counsel for the revision petitioner vehemently argued that the Commissioner has been biased, and has brought in facts, which are beyond the scope of the litigation, and as per law, unless the first Commissioner's report is impeached, the Court cannot appoint a second Commissioner.

4. Heard the learned counsel for the first respondent, who argued along the lines of the reasons of the Court below.

5. There is merit in the contention of the learned counsel for the revision petitioner that new Commissioner cannot be appointed unless the earlier Commissioner's report is impeached. However, the Civil Procedure Code does not stipulate the specific stage, when the first Commissioner's report can be impeached. In all circumstances, it is only advisable for the Court to proceed with the trial of the case, during which the Commissioner may also be cross examined by the party, who is opposing the Commissioner's report and the Court to take a call in the context of the facts and circumstances, which emerge during trial and decide whether the Commissioner's report deserves to be impeached or not. This is because at that point of time, the Court may have greater materials in its possession to take a pragmatic view in the quality of the Commissioner's report. After all, it should not be forgotten that the Commissioner is an Officer of the Court, and it is only appropriate that the Court should possess adequate materials to impeach the report of its own Officer.

6. Therefore, this Court considers that the present step taken by the second defendant / revision petitioner herein can only be termed as bid premature. Since the suit is pending for six years, the trial Court is now required to dispose of the suit at the very earliest, and may take a fresh call on the prayer of the revision petitioner at the appropriate stage of the trial, uninfluenced by the reasonings, it has given in the impugned order in I.A.No.643 of 2018 dated 06.08.2018.



7. In conclusion, this Civil Revision Petition is allowed and the order passed in I.A.No.643 of 2018 is set aside and the matter is remanded back to the trial Court for consideration at the appropriate stage of the trial. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ta

To

1.The Additional District Munsif, Karur

COPY TO

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai (2 COPIES)

+1 CC to M/s.D.BALA MURUGA PANDI, Advocate (SR-23471[F] dated 01/12/2020)

+1 CC to M/s.K, SURESH, Advocate (SR-23716[F] dated 02/12/2020)

C.R.P. (MD)No.2240 of 2018
01.12.2020

VR(CO)

TR(22.12.2020) 3P 6C